

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

77-1041

To be argued by
DAVID J. GOTTLIEB

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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:
UNITED STATES OF AMERICA, :
:
Plaintiff-Appellee, :
:
-against- :
:
JOSEPH MARTINEZ-CARCANO, :
:
Defendant-Appellant. :
:
-----x

B
Ptgs
Docket No. 77-1041

APPENDIX TO APPELLANT'S BRIEF

ON APPEAL FROM A JUDGMENT
OF THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK



WILLIAM J. GALLAGHER, ESQ.,
THE LEGAL AID SOCIETY,
Attorney for Appellant
JOSEPH MARTINEZ-CARCANO
FEDERAL DEFENDER SERVICES UNIT
509 United States Courthouse
Foley Square
New York, New York 10007
(212) 732-2971

DAVID J. GOTTLIEB,
Of Counsel.

PAGINATION AS IN ORIGINAL COPY

DATE	IV. PROCEEDINGS (continued)	PAGE TWO	V. EXCLUDABLE DELAY	
12-16-76	DOCUMENT NO. 1	Filed deft's statment of financial status.		
01-05-77	Filed Judgment (atty. Gino Gallina by Juris G. Cederbaums) Ct. 1- 3 yrs. impr. and FINED \$2,000. to be paid jointly and severally with Zulma Rosa Amy. Ct. 2- 6 yrs. impr. to run conc. w/sent. on ct. land both terms to run cons. w/sent. deft. is now serving. Gagliardi, J. issued all copies			
01-13-77	Filed deft's notice of appeal from judgment of 1-5-77. Mailed copies			

FINE AND RESTITUTION PAYMENTS

DATE	RECEIPT NUMBER	C.D. NUMBER	DATE	RECEIPT NUMBER	C.D. NUMBER

JLS:ld
d-426

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76 APR 09 1978

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :

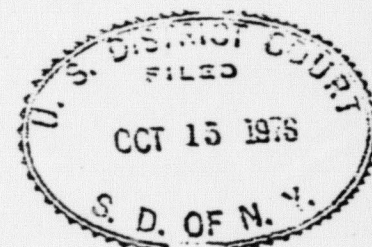
- v - :

INDICTMENT

76 Cr.

JOSEPH ANTHONY MARTINEZ-CARCANO, :
a/k/a "Tony", :
GEORGE D. PHILIP, :
YASIN A. WAHID, a/k/a "Coco", :
ZULMA ROSA AMY, a/k/a "Vickie", :
CARMEN CIRILO, a/k/a "Mina", :
and BRENDA VIRGINIA COOKE, :

Defendants. :



----- -x
INTRODUCTION

The Grand Jury charges:

1. The defendant JOSEPH ANTHONY MARTINEZ-CARCANO, a/k/a "Tony", at all times relevant to this Indictment, was an inmate at the Metropolitan Correctional Center, 150 Park Row, New York, New York ("MCC"), then serving a term of confinement for violations of the federal narcotics laws to terminate in December, 1978.

2. The defendants GEORGE D. PHILIP and YASIN A. WAHID, a/k/a "Coco", at all times relevant to this Indictment, were employed as Correction Officers at the MCC by the United States Bureau of Prisons, United States Department of Justice.

MICROFILM

OCT 15 1976

3. The defendant ZULMA ROSA AMY, a/k/a "Vickie", at all times relevant to this Indictment, was the common-law wife of the defendant, JOSEPH ANTHONY MARTINEZ-CARCANO, a/k/a "Tony".

4. The defendant CARMEN CIRILO, a/k/a "Mina", at all times relevant to this Indictment, was the common-law wife of the defendant YASIN A. WAHID, a/k/a "Coco".

5. The defendant BRENDA VIRGINIA COOKE, at all times relevant to this Indictment, was a friend of the defendants YASIN A. WAHID, a/k/a "Coco" and CARMEN CIRILO, a/k/a "Mina".

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6. Yolanda Sarmiento, at all times relevant to this Indictment, was in the custody of the Attorney General having been committed to the MCC upon her failure to post bail in the amount of two and one half million dollars (\$2,500,000), pending trial on indictments in both the Eastern and Southern Districts of New York, charging her with numerous violations of the federal narcotics laws.

7. Each and every paragraph of this Introduction is hereby repeated, realleged and incorporated by reference in Counts One through Three of this Indictment, as though fully set forth therein.

COUNT ONE

The Grand Jury further charges:

8. From on or about the 1st day of September, 1976, up to and including the date of the filing of this Indictment, in the Southern District of New York, JOSEPH ANTHONY MARTINEZ-CARCANO, a/k/a "Tony", GEORGE D. PHILIP,

YASIN A. WAHID, a/k/a "Coco", ZULMA ROSA AMY, a/k/a "Vickie", CARMEN CIRILO, a/k/a "Mina", and BRENDA VIRGINIA COOKE, the defendants, and other persons to the Grand Jury known and unknown, unlawfully, wilfully and knowingly, together and with each other did combine, conspire, confederate, and agree to violate Title 18, United States Code, Sections 201(c) and 752(a).

9. It was part of said conspiracy that the defendants and their co-conspirators would and did instigate, aid and assist the escape of Yolanda Sarmiento from the MCC.

10. It was further a part of said conspiracy that the defendants GEORGE D. PHILIP and YASIN A. WAHID, aided and abetted by their co-defendants and co-conspirators JOSEPH ANTHONY MARTINEZ-CARCANO, ZULMA ROSA AMY, CARMEN CIRILO and BRENDA VIRGINIA COOKE, would and did, directly and indirectly, corruptly ask, demand, exact, solicit, seek, accept, receive

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and agree to receive things of value, to wit, money in the amount of five thousand dollars (\$5000) for themselves and others, in return for being influenced in their performance of official acts, and for being influenced to commit and aid in committing, and to collude in, and allow, a fraud and make opportunity for the commission of a fraud, on the United States, and for being induced to do and omit to do acts in violation of their official duties, to wit, instigating, aiding, assisting and permitting the escape of an inmate, Yolanda Sarmiento, from custody at the MCC.

OVERT ACTS

— In furtherance of, and to effect the objects of the conspiracy, the following overt acts, among others, were committed by the defendants in the Southern District of New York, and elsewhere:

1. Prior to September 21, 1976, the defendant JOSEPH ANTHONY MARTINEZ-CARCANO, a/k/a "Tony", offered to arrange for the escape from custody at the MCC of Yolanda Sarmiento in exchange for twenty-five thousand dollars (\$25,000).

2. On or about September 21, 1976, the defendants GEORGE D. PHILIP and ZULMA ROSA AMY, a/k/a "Vickie", went to Room 719 of the Ramada Inn, Eighth Avenue and 48th Street, New York, New York, ("Ramada Inn") and met there with Rafael Rodriguez, a New York City Police Department Detective, acting in an undercover capacity, and another and discussed with them the payment of a bribe and the means by which they would effect the escape of Yolanda Sarmiento, including the use of a wig, clothing, and false identification.

3. On or about September 21, 1976, the defendant GEORGE D. PHILIP accepted five thousand dollars (\$5000) from Rafael Rodriguez, and gave to the defendant ZULMA ROSA

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AMY, a/k/a "Vickie", three thousand dollars (\$3000) of that money, which she counted and placed in her purse.

4. On or about September 27, 1976, the defendant YASIN A. WAHID, a/k/a "Coco", went to Room 719 of the Ramada Inn, and met with Rafael Rodriguez and another and told them the items which they were to secure for use in the escape of Yolanda Sarmiento.

5. On or about September 28, 1976, the defendant YASIN A. WAHID, a/k/a "Coco", went to Room 719 of the Ramada Inn and met with Rafael Rodriguez and another and received a wig, a camera, a woman's pants suit, a blouse and a pair of shoes.

6. On or about September 28, 1976, the defendant YASIN A. WAHID, a/k/a "Coco", took photographs with Rafael Rodriguez and another in Room 719 of the Ramada Inn.

7. On or about September 28, 1976, the defendant YASIN A. WAHID, a/k/a "Coco", stated to Rafael Rodriguez and

another that he had prepared a false identification card for Yolanda Sarmiento to be used by her in escaping from the MCC.

8. On or about September 30, 1976, the defendant YASIN A. WAHID, a/k/a "Coco", handed to Rafael Rodriguez a letter from JOSEPH ANTHONY MARTINEZ-CARCANO, a/k/a "Tony".

9. On or about September 30, 1976, the defendant YASIN A. WAHID, a/k/a "Coco", went to Room 719 of the Ramada Inn and met there with Rafael Rodriguez and another and discussed the escape of Yolanda Sarmiento.

10. On or about October 1, 1976, the defendant JOSEPH ANTHONY MARTINEZ-CARCANO, a/k/a "Tony", placed three telephone calls to Rafael Rodriguez at Room 719 of the Ramada Inn, and discussed with him the planned escape of Yolanda Sarmiento.

11. On or about October 4, 1976, the defendant JOSEPH ANTHONY MARTINEZ-CARCANO, a/k/a "Tony", placed a telephone call to Rafael Rodriguez at Room 719 of the Ramada Inn

12. The defendants JOSEPH ANTHONY MARTINEZ-CARCANO, a/k/a "Tony", ZULMA ROSA AMY, a/k/a "Vickie", CARMEN CIRILO, a/k/a "Mina", and BRENDA VIRGINIA COOKE did unlawfully, willfully and knowingly aid, abet, counsel, command, induce and procure defendants GEORGE D. PHILIP and YASIN A. WAHID, a/k/a "Coco", in the commission of the offense alleged in paragraph eleven.

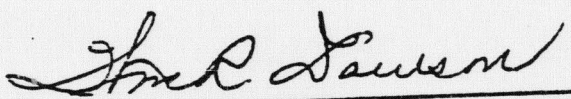
(Title 18, United States Code, Sections 201(c) and 2.)

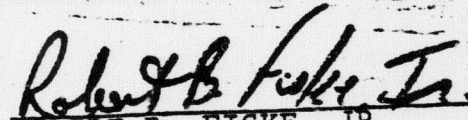
COUNT THREE

The Grand Jury further charges:

13. On or about the 4th day of October, 1976, in the Southern District of New York, JOSEPH ANTHONY MARTINEZ-CARCANO, a/k/a "Tony", GEORGE D. PHILIP, YASIN A. WAHID, a/k/a "Coco", ZULMA ROSA AMY, a/k/a "Vickie", CARMEN CIRILO, a/k/a "Mina", and BRENDA VIRGINIA COOKE, the defendants, did instigate, aid and assist the escape from custody of Yolanda Sarmiento, who was committed to the custody of the Attorney General by virtue of an arrest on a charge of felony, to wit, violation of the federal narcotics laws, and who was at that time incarcerated at the MCC at the direction of the Attorney General.

(Title 18, United States Code, Sections 752(a) and 2.)


FOREMAN


ROBERT B. FISKE, JR.
United States Attorney

1-5-77. YASIR A. WAHID (atty Frank Lopez) 2 years on at 1 and fines
of \$2,000 - 6 months on at 3. to run concurrently with
sentence imposed on at 1. Prob. 3 years. At 2 dismissed

d ZULMA ROSA AMY (atty Frederick Watts) 6 months
on each of at 1 & 3 concurrently. E.S.S. Prob. 2 years.
Fined \$1,000 - on at 1, to be paid as directed
by Prob. Dept. At 2 dismissed.

d BRENDA VIRGINIA COOKE (atty Jack Lysan)
6 months on at 1. E.S.S. Prob. 2 years. At 2 & 3
dismissed.

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d CARMEN CRILLO (atty Frank Lopez) 6 months on
at 1. E.S.S. Prob. 2 years. At 2 & 3 dismissed

Gaghardi, J.

4

DEC 2

1976

Q Henry C. Philip (atty Jesse Gasler). Bail fixed in the sum of \$25,000 P.R.B. signed by Dft, Miss Scholer, brother Carlton. Dft is to report in person every Tuesday at 10:00 and every Friday at 10:00 to the probation Dept until date of sentence. Dft. is to follow all recommendations that the Probation makes & surrender passport.

Wagland, J.

DEC 19 1976

Q Before Wagland J. - Jury Trial begun as to Dft

~~JOSEPH ANTHONY MARTINEZ - CARLANO~~ (atty Lino Gallina)

DEC 17 1976

- Trial continued

DEC 20 1976

- Trial continued

DEC 21 1976

- Trial continued

DEC 22 1976

- Trial continued and concluded - Jury verdict

Count 1 - guilty

" 2 - guilty

" 3 - not guilty, P.S.I. Extended, for sentence 1-5-77

at 9³⁰. Bail revoked - Left REMANDED.



Gayhardt J.

d 1-5-77. JOSEPH ANTHONY MARTINEZ CARCANO (att. John Gallen
Dr. James D. Rederbaum) 3 years on ct 1 and fine \$2,000 - to be
paid jointly or separately by Julia Rosa Amy. 6 months on
ct 2 to run concurrently with sentence imposed on
ct 1 and to run consecutively ~~to~~ with sentence left
is now serving.

d GEORGE D. PHILIP (att. Jesse Losco) 2 years on ct 1
and fine \$2,000 - 6 months on ct 3 to run concurrently
with sentence imposed on ct 1. Perk. 3 years.
Left to surrender to U.S. Marshal on 1-19-77 at 10:00 AM.
Left court on present bail until date of surrender.
ct 2 is dismissed

↓

(over)

10-21-76 - Dept. Brenda Virginia Cooke (Atty. J^c)
pleads not guilty. Continued ROR.

Dept. Carmen Cirilo (Atty. Frank Lopez)
Court directs a not guilty plea be entered. Continued
Trial fixed ~~tentatively~~ for November 15, 1976. All
further proceedings adjourned to October 26, 1976 at
2 p.m. in Room 506, ~~7th~~

Assigned Pagliari for all purp
Pagliari

11-9-76 - P.T.C. held, (all attys present) trial set for 11-18-76 at 9³⁰

11-11-76 GEORGE D. PHILIP (Atty. Jose Zaslav present) Dept with drafts -
plead not guilty and now pleads guilty to counts 1 & 2
only. P.L. I Order, for sentence 12-21-76 at 9³⁰ Dept.
Continued remanded in lieu of \$5,000 bail, until date of sentence.
Pagliari

Nov. 15, 1976- YASIN A. WAHID (Atty Frank Lopez present) deft with draws his plea of not guilty and now pleads guilty to cts 1 & 3 only

ZULMA ROSA AMY (Atty Frederick Watts present) deft. withdraws her plea of not guilty and now pleads guilty to cts 1 & 3 only.

CARMEN CIRILO (Atty Frank Lopez present) deft withdraws her plea not guilty and now pleads guilty to count 1 only.

BRENDA VIRGINIA COOKE (Atty Jack Lipson present) deft withdraws her plea of not guilty and now pleads guilty to count 1 only.

P.S.I. Ordered, for sentence for all Deft. 12-21-76 at 9:30 AM

Yasmin A. Wahid- Remanded in lieu of \$50,000.00 cash or surety , until date of sentence.

Zulma Rosa Amy- continued on \$10,000 P.R.B. until date of sentence

Carmen ~~Cirilo~~ Cirilo- continued R.O.R. until date of sentence.

Brenda Virginia Cooke- continued R.O.R. until date of sentence.

GAGLIARDI, J.

76 CRIM. 0965

Form No. USA-33a-274 (Ed. 6-25-58)

United States District Court

SOUTHERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

vs.

JOSEPH ANTHONY MARTINEZ-CARCANO,
a/k/a "Tony",
GEORGE D. PHILIP,
YASIN A. WAHID, a/k/a "Coco",
ZULMA ROSA AMY, a/k/a "Vickie",
CARMEN CIRILO, a/k/a "Mina",
and BRENDA VIRGINIA COOKE,

Defendants.

INDICTMENT

18 U.S.C. §§§201(c), 752(a) and 2.

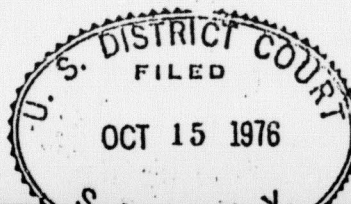
ROBERT B. FISKE, JR.

United States Attorney.

A TRUE BILL

John R. Dawson

Foreman.



10-15-76 ~~JUDGE CAGAN~~ Indictment. Duffy

10-21-76 - Dept. Joseph Anthony
Martinez - Cardano, a/k/a "Gony" L
(att'y: Elizabeth Sobell for Dino Vallina)
pleads not guilty. Dept. continued remanded
in lieu of bail fixed at 50,000 c/s as
per by Magistrate.

Dept. George W. Philip
(no att'y. present). Court directs a not guilty
plea be entered. Dept. referred to Magistrate
for assignment of counsel. Dept. continued
remanded in lieu of \$50,000. Bail as
fixed by Magistrate.

Dept. Yasin A. Wahid
(att'y: Frank Lopez) pleads not guilty. Dept.
continued remanded in lieu of \$35,000. c/s Bail
as fixed by Magistrate.

Dept. Amy Rose Zulma
(att'y: Frederick Watts) pleads not guilty.
Bail (\$10,000. PRB - co-signed by Bernard

12/21/76
USA vs.
Joseph
Martinez

rkb

624

(In open court; jury present.)

CHARGE OF THE COURT

(Gagliardi, D.J.)

THE COURT: Members of the jury, I am sure that you are aware that the purpose of not permitting anyone to come in or out during the course of the charge is that you will not be distracted by movement in and about the courtroom with respect to the charge on the law I am about to deliver to you.

You have paid careful attention and I have noticed your conscientiousness in the observations you have made of the witnesses and in following the instructions I gave you at the commencement of this trial.

We have now reached the point where all the evidence has been presented. Closing arguments of the lawyers have been made, and shortly after I have completed my charge to you of the applicable law, you will retire to deliberate upon your verdict.

You are to perform this final duty in an attitude of complete fairness and impartiality. You are to appraise the evidence calmly and deliberately and, as was emphasized by me at the time of your selection as jurors, without bias or prejudice with respect to either

1 the Governmen- or to the defendant as parties to this
2 controversy.
3

4 The fact that this prosecution has been brought
5 in the name of the United States of America entitles it
6 to no greater consideration than that accorded to any other
7 party in the case.

8 By the same token, it is entitled to no less
9 consideration. All parties stand as equals before the
10 bar of justice.

11 Your final role is to pass upon and determine
12 the fact issues in this case. You, the members of the
13 jury, are the sole and exclusive judges of the facts. You
14 pass upon the weight of the evidence. You determine the
15 credibility of the witnesses. You resolve such conflicts
16 as there may be in the testimony and you draw whatever
17 reasonable inferences that are to be drawn from the facts
18 as you determine them to be.

19 My function at this point is to instruct you
20 on the law. It is your duty to accept these instructions
21 of the law and apply them to the facts as you determine
22 them to be. The logical result of that application will
23 be your verdict in this case.

24 With respect to any fact matter, it is your
25 recollection and yours alone that governs. Anything that

1
2 counsel either for the Government or for the defense
3 may have said with respect to any matters in evidence,
4 that is to say, as to any factual matter, whether stated
5 in a question, in argument or in summation, is not to be
6 substituted for your own independent recollection. So
7 too, anything that the Court may have said during the course
8 of the trial with respect to a fact matter or that I may
9 say during the course of these instructions, is not to be
10 taken in substitution for your own independent recollection
11 which governs at all times.

12 Before we consider the precise charges of
13 the indictment, I think a number of preliminary observa-
14 tions may be helpful to you.

15 In determining the facts, you should not be
16 influenced by rulings that the Court may have made during
17 the trial. These rulings dealt with matters of law and
18 not questions of fact. Counsel for both sides not only
19 had the right but indeed the duty to press whatever legal
20 objections they felt existed with respect to offered
21 evidence. The Court's rulings on objections made either
22 by the attorney for the Government or the attorney for the
23 defendant, are not to be considered by you.

24 Now, we did have a number of instances in
25 this case and a number of times when I sustained objections

1 to questions. It was my function during the course
2 of this trial to conduct this trial in a manner that would
3 insure that only those things which should be considered
4 by you got to your attention. I told you at the outset
5 where I sustain an objection to a question, you cannot
6 speculate nor should you speculate on what the witness
7 would have said had he been permitted to answer, nor are you
8 to draw any inference from the wording of the question or
9 the fact it was asked, and as I have indicated to you,
10 there have been a number of those instances in this case
11 and I attempted as best I could and in the manner in which
12 I did it to insure that you would be aware of the necessity
13 of not assuming anything or inferring anything by reason
14 of an objectionable question.
15

16 You must remember, however, in ruling on
17 objections, I was only deciding questions of law and not
18 a fact which, which are for you and you alone.

19 Now, during the course of this trial there
20 were occasions when I admonished counsel. As I said to you
21 before, it is my obligation as a Judge to insure that this
22 trial is conducted in a manner which presents to you
23 impartially the relevant evidence and testimony in this
24 case.

25 Those incidents must play no part in your

1 deliberations. The personalities of the lawyers or of
2 the Judge have nothing to do with your duty to resolve the
3 issues of fact in this case.
4

5 I am aware that in normal circumstances a Judge
6 may have some influence with the members of the jury. If
7 you think you have gleaned some indication as to my opinion
8 of how this case should be decided either from any ques-
9 tions that I may have asked, and as I indicated to you
10 it was appropriate for a Judge to ask questions on certain
11 occasions, or from my expression or tone of voice, dis-
12 regard it entirely. The Court has no opinion as to the
13 veracity or the credibility of the witnesses or the
14 guilt or innocence of this defendant. You are the judges
15 of the facts and you are the sole judges of guilt or innocence
16 of this defendant. I am merely a Judge of the law. Fact
17 issues must be decided by you solely and only within the
18 framework of the evidence and the principles of law that
19 apply, and finally, please do not single out any one
20 instruction of mine as stating the law alone. Take them
21 all into account after you have heard them all.

22 You are to consider only the evidence in
23 this case which consists of the sworn testimony of the
24 witnesses, the exhibits which have been received in evidence,
25 the facts which have been stipulated and the presumptions

which I will tell you about in these instructions such as the presumption of innocence, but while you are to consider only the evidence in the case, you are not limited to the bald statement of the witnesses.

On the contrary, you are permitted to draw from the facts which you find have been proved such reasonable inferences as seem justified to you in the light of your own experiences.

An inference is merely another word for a conclusion which reason or common sense leads you to draw from the facts that have been proved here.

I remind you, the indictment is merely a formal method of accusing a defendant of the crimes charged and is not evidence against the defendant, nor is any weight to be given to the fact that an indictment has been returned against the defendant.

There are two types of evidence from which a jury may properly find the truth as to the facts in the case. One is direct evidence. Such as the testimony of an eye witness. Somebody who saw or heard something done or said.

The other is indirect or circumstantial evidence. That is the proof of a chain of circumstances pointing to the existence or non-existence of certain

1 facts. Generally the law makes no distinction between
2 direct and circumstantial evidence but simply requires
3 that the jury find the facts in accordance with all the
4 evidence in the case, both direct and circumstantial.
5

6 We have an example that most of us Judges,
7 not only in this courthouse but in many courthouses through-
8 out the country give to illustrate the difference between
9 direct and circumstantial evidence, and maybe you have
10 heard it before and if you have, you will know what it is
11 and those of you who have not heard it before, it might
12 be helpful to you to explain to you the difference between
13 direct and circumstantial evidence if that is necessary.

14 Let's suppose even though it wasn't a nice day
15 out at least when we came into this courtroom this morning
16 it was a sunshiny day, no clouds in the sky, no indication
17 it was going to be anything other than but a nice,
18 pleasant sunshiny day for the balance of the day.

19 Let's make another assumption that we were in
20 one of those courtrooms on the first floor right inside
21 the entrance to this courthouse as you come in, and the
22 courtroom is one of those that is down there that doesn't
23 have any windows in it, so you can't see outside. Let's
24 assume when you came in, as I said, at the start of the
25 day it was a nice, bright sunshiny day, but after you were

2 there for about an hour or two, you observed a spectator come
3 into the back of the courtroom, his hair is damp or wet,
4 his face is a little damp and his clothes are damp.

5 Let's assume a few minutes later somebody comes
6 in and he has a hat in his hand and it is dripping water
7 and his clothes are also damp, and a minute or two later
8 someone else comes in, has a raincoat on, umbrella in his
9 hand and the umbrella and the raincoat are both dripping
10 water.

11 Now, you couldn't look outside and see what
12 the weather was at that time, but you could reasonably
13 infer from the chain of circumstances of these three
14 spectators coming in and the condition in which they were,
15 that it was raining outside.

16 That is circumstantial evidence. A chain of
17 circumstances leading to the existence or non-existence
18 of certain things. Direct evidence, of course, is
19 when you came in and saw it was a nice, pleasant day --
20 and the law doesn't make any difference between direct
21 and circumstantial evidence as long as you find the facts
22 in accordance with the evidence and the law in the case.

23 The defendant has pleaded not guilty to the
24 charges in the indictment. Thus the burden is upon the
25 Government to prove guilt beyond a reasonable doubt. I

1
2 will explain for you some time later in these instructions,
3 what is a reasonable doubt. This burden never shifts
4 to the defendant because the law never imposes upon a defend-
5 ant in a criminal case, the burden or duty of calling any
6 witness or producing any evidence.

7 The law presumes a defendant to be innocent of
8 crime. Thus a defendant although accused begins the trial
9 with no evidence against him and the law permits nothing
10 but legal evidence presented before you as jurors before you
11 may consider a charge of guilt against a defendant.

12 The presumption of innocence continues with the
13 defendant throughout the trial until such time, if ever,
14 you find him guilty beyond a reasonable doubt. The
15 presumption of innocence alone is not sufficient to convict
16 a defendant unless and until after impartial consideration
17 of all the evidence in the case you jurors are unanimously
18 convinced of his guilt beyond a reasonable doubt.

19 Now, a separate crime or offense is charged in
20 each of the three counts of this indictment. Each charge
21 and the evidence pertaining to it should be considered
22 separately. The fact you may find a defendant guilty
23 or not guilty of one of the counts charged in the indict-
24 ment should not control your verdict as to any other
25 offense charged.

1
2 Before I get to the specific charges in the
3 indictment and read it to you -- and incidentally while I
4 read it to you, you don't have to memorize it because when
5 you retire to the jury room, you will have with you a copy
6 of the indictment -- but before I get to the specific
7 charges, I think I would like to remind you, it may be
8 helpful to you, if I review with you the witnesses who
9 have appeared in this trial in the order in which they
10 appeared.

11 It has been a short trial, actually, in the
12 amount of testimony that has been received and what has
13 been heard and counsel have in their summations reviewed
14 with you what they think are the appropriate highlights of
15 the testimony that was presented, so there is no need
16 for me to go over that, but the witnesses were as follows:

17 The first witness was Yolanda Sarmiento Diaz.
18 During the course of her testimony, the Court took judicial
19 notice that October 4, 1976, was Yom Kippur, the Feast of
20 the Holy Day of Yom Kippur.

21 Following Mrs. Sarmiento's testimony, Mr. David
22 A. DePetrus was the witness, and he is an Assistant United
23 States Attorney in the Eastern District of New York.

24 The next witness was Mr. Rafael J. Rodriguez,
25 a New York City police department detective, and following

that the Government rested.

The defendant then called in the following order: Carlo Mussorfito, the staff training coordinator at the MCC. He was followed by Edna David, recreational specialist at the MCC. Mr. Paul Lannigan, who was a contract employee at the MCC; followed by Albert Carlson of the New York City Social Services Department.

Yolanda Sarmiento was recalled by the defendant and Armando Cardona was called. He was a convict, convicted of murder, who is presently committed to Clinton Prison at Dannemora.

The defendant then took the stand, and he was followed on the stand by John Dockendorff, a member of the Salvation Army. Albert Carlson was recalled and Paul Lannigan was then recalled, following which both sides rested.

I believe that is the witness list in the order in which they appeared.

Again, it is your recollection that controls and not mine.

With those preliminary remarks, we now turn to the specific charges of the indictment:

Count 1 is a conspiracy count. The indictment names a number of people as defendants, Joseph Anthony

Martinez-Carcano, also known as Tony; George D. Philip, Yasin A. Wahid, also known as Coco, Zulma Rosa Amy, also known as Vicki; Carmen Cirilo, also known as Mina, and Brenda Virginia Cooke.

Now, the first count as I say is a conspiracy count and charges those defendants with violating Section 18, United States Title 18, Section 377, which provides in pertinent part as follows:

"If two or more persons conspire to comit any offense against the United States or to defraud the United States or any agency thereof in any manner or for any purpose in one or more of the objects of the conspiracy and do any act to effect the object of the conspiracy, each commits a crime."

Now, the conspiracy count is devised into two sections. I will read the second section to you separately. It does not charge a separate crime, but it is part of the conspiracy count, and I will explain that to you later.

The first part of the conspiracy count which is Count 1 reads as follows:

"The grand jury charges (1), the defendant Joseph Anthony Martinez-Carcano, also known as Tony, at all times relevant to this indictment was an inmate

of the MCC, 150 Park Row, New York, New York", and we refer to that here as the MCC --"then serving a term of confinement for violations of the Federal Narcotics Laws, to terminate in December of 1978.

"(2) The defendants George D. Philip and Yasin A. Wahid also known as Coco, at all times relevant to this indictment, were employed as correction officers at the MCC by the United States Bureau of Prisons, United States Department of Justice.

"(3) Defendant Zulma Rosa Amy also known as Vicki, at all times relevant to this indictment was the common law wife of Joseph Anthony Martinez-Carcano.

"(4) The defendant Carmen Cirilo, also known as Mina, at all times relevant to this indictment, was the common law wife of the defendant Yasin Wahid, also known as Coco.

"(5) The defendant Brenda Virginia Cooke, at all times relevant to this indictment was a friend of the defendant Yasin Wahid, also known as Coco, and Carmen Cirilo, also known as Mina.

"(6) Yolanda Sarmiento, at all times relevant to this indictment was in the custody of the Attorney General having been committed to the MCC upon her failure to post bail in the amount of \$2.5 million pending trial

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on indictment in both the Eastern and Southern District of New York, charging her with numerous violations of the Federal Narcotics Laws.

"(7) each and every paragraph of this introduction is hereby repeated, realleged and incorporated by reference to Counts 1 through 3 of this indictment as though fully set forth herein."

Now, that is the introduction to all three counts. I will not read it to you again. Count 1, the grand jury further charges:

"(8) from on or about the first day of September 1976, up to and including the date of the filing of this indictment in the Southern District of New York, Joseph Anthony Martinez-Carcano, also known as Tony, George D. Philip, Yasin Wahid, also known as Coco, Zulma Rosa Any, also known as Vicki, Carmen Cirilo, and Brenda Virginia Cooke, the defendant and other persons to the grand jury known and unknown, unlawfully, wilfully and knowingly together and with each other did combine, conspire, confederate and agree to violate Title 18, United States Code, Sections 201C and 752A. Those sections I will read to you later. They have to do with bribery of a public official and assisting escape, which are the other two counts in this indictment.

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2 "(9) It was part of said conspiracy that
3 the defendants and their co-conspirators did instigate
4 aid and assist the escape of Yolanda Sarmiento from the MCC.

5 "(10) It was further a part of said conspiracy
6 that the defendants George D. Philip and Yasin Wahid aided
7 and abetted by their co-defendants and co-conspirators,
8 Joseph Anthony Martinez-Carcano, Zulma Rosa Any, Carmen
9 Cirilo and Brenda Virginia Cooks, would and did directly
10 and indirectly corruptly ask, demand, exact, solicit, seek,
11 accept, receive and agree to receive things of value,
12 to wit, money in the amount of \$5000 for themselves and
13 others in return for being influenced in their performance
14 of official acts and for being influenced to commit and
15 aid in committing and to collude in and allow a fraud and
16 make opportunity for the commission of a fraud on
17 the United States for being induced to do and omit to do acts
18 and in violation of their official duties, to wit, instigat-
19 ing, aiding, assisting and permitting the escape of an in-
20 mate, Yolanda Sarmiento, from custody at the MCC.

21 As I have said, this is the first part of the
22 conspiracy charge. The other part, the overt acts, I
23 will read to you later.

24 Before you may find the defendant guilty of
25 conspiracy as charged in the first count of the indictment,

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2 you must find the following three elements beyond a
3 reasonable doubt. First, that some time approximately
4 between September 1, 1976, and October 4-- the filing
5 of the indictment was October 15, 1976. The date specified
6 in the indictment. An agreement or understanding existed
7 between any two or more named conspirators to commit
8 at least one of the crimes charged in the indictment, namely,
9 to bribe a Government official, or to assist in the escape
10 of Yolanda Sarmiento, from the MCC.

11 In short, the Government must prove that a
12 conspiracy existed with respect to the bribery or the escape.

13 That is the first element you must find beyond
14 a reasonable doubt.

15 The second is that Joseph Anthony Martinez-
16 Carcano knowingly and wilfully was a participant in the
17 conspiracy with knowledge of at least one of its criminal
18 purposes.

19 The third element is that one of the con-
20 spirators knowingly committed at least one overt act set
21 forth in the indictment at or about the time alleged in
22 furtherance of the conspiracy and that at least one of
23 these acts was committed in the Southern District of
24 New York, which for our purposes, includes among other
25 counties, New York and Bronx County.

Let me define a conspiracy for you.

Simply defined, a conspiracy is a combination of two or more persons by concerted action to accomplish some unlawful purpose. A conspiracy is an unlawful combination or agreement to violate the law. Whether or not the persons charged in the indictment accomplished what they set out to do is immaterial to the question of guilt or innocence.

Thus, the success or lack of success of the conspiracy does not matter for a conspiracy is a crime entirely separate and distinct from a substantive crime that may be the goal of the conspiracy.

A conspiracy has sometimes been called a partnership in criminal purpose in which each member becomes the agent of every other member. However, to establish the existence of a conspiracy, the Government is not required to show that two or more persons sat around a table and entered into a solemn compact orally or in writing stating that they have formed a conspiracy to violate the law, setting forth the details of the plan, the means by which it is carried out or the part to be played by each conspirator.

Your common sense will tell you that when men undertake to enter into a conspiracy, much is left to unexpressed understanding. Conspirators usually do not

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2 reduce their agreement in writing or acknowledge them before
3 a notary public, nor do they publicly broadcast their
4 plans. A conspiracy is almost always characterized by
5 secrecy.

6 In determining the existence or non-existence
7 of a conspiracy, it is not necessary that you find that
8 each and every one of the alleged co-conspirators joined
9 in the conspiracy. It is sufficient if you find beyond
10 a reasonable doubt that two or more persons in any manner,
11 through any contrivance, impliedly or tacitly, came to a com-
12 mon understanding to violate the law.

13 In determining whether there has been an
14 unlawful agreement, you may consider acts and conduct which
15 are done to carry out a criminal purpose. Usually, the
16 only evidence available is that of disconnected acts on the
17 part of the alleged individual conspirators, which acts
18 you may find when taken together in connection with each
19 other and with the reasonable inferences flowing therefrom,
20 show a conspiracy or agreement to secure a particular
21 result as satisfactorily and conclusively as more direct
22 proof.

23 If upon consideration of all the evidence
24 direct and circumstantial you find beyond a reasonable doubt
25 that the minds of at least two of the alleged conspirators

1 met in an understanding way and that they agreed as
2 I have explained in a conspiratorial agreement to work
3 together in furtherance of the unlawful scheme alleged
4 in the indictment, and that thereafter at least one of the
5 conspirators did any unlawful act to effect the object of
6 the conspiracy, as I have said to you, then proof of the
7 existence of the conspiracy is established.
8

9 In this connection, as I have told you, it is
10 not necessary for the Government to prove the success of
11 the conspiracy in order to establish a violation of the
12 conspiracy statute. Since a conspiracy is basically
13 the agreement to violate the law, it may exist even though
14 the final objectives were never accomplished.

15 Now, you will recall that I defined a
16 conspiracy as a combination of two or more persons by
17 concerted action to accomplish some unlawful purpose.

18 Thus, before you may find that a conspiracy
19 existed, you must also find what the conspirators
20 intended to do would violate one or more Federal laws if
21 they had succeeded in accomplishing what they set out to
22 do.

23 The indictment alleges the conspiracy commenced
24 on or about September 1, 1976, and continued up to the
25 date of the filing of the indictment which is October 24,

1976. It is not necessary for the Government to prove that the conspiracy started and ended on those specific dates. It is sufficient if you find in fact that the conspiracy was formed and that it existed for some substantial time within the period set forth in the indictment, and that at least one overt act was committed during that period.

A conspiracy once formed continues as long as the evidence shows the conspirators intend to continue it. Such intention may be inferred from such activities that you may find to be in furtherance of the purpose of the conspiracy.

I believe, and it is your recollection that governs, that the conspiracy aborted some time during October 4, 1976, and the conspiracy does terminate with the arrest of the conspirators.

If you find beyond a reasonable doubt that the conspiracy charged in the indictment existed, you must determine who its members were. In determining whether a defendant became a member of the conspiracy, you must determine not only whether he participated in it, but whether he did so with knowledge of its unlawful purpose. Did he join with an awareness at least of some of the aims and purposes of the conspiracy.

Knowledge is a matter of inference from facts proved. It is not necessary that a defendant be fully informed as to the details or the scope of the conspiracy in order to justify an inference of knowledge. A defendant need not know the full extent of the conspiracy and all of its activities and actors. However, mere association with one or more of the conspirators does not make one a member of the conspiracy, nor is knowledge without participation sufficient.

What is necessary, is that the defendant participate with knowledge of at least some of the purposes of the conspiracy and with the intent to aid in the accomplishment of those unlawful ends.

If you find that the conspiracy existed and the defendant knowingly participated in it, the extent of his participation has no bearing on the question of guilt or innocence. The guilt or innocence of a conspirator is not measured by the extent or duration of his participation. Even if he participated in it to a degree more limited than that of his co-conspirators, he is equally culpable so long as he was in fact a conspirator.

If one joined a conspiracy after its formation and engaged in it to a more limited degree than other co-conspirators, he is equally culpable so long as you find

beyond a reasonable doubt that he was a co-conspirator.

Each member of a conspiracy may perform separate and distinct acts at different times and different places. Some conspirators may play major roles and some may play minor roles. It is not required that a person be a member of the conspiracy from its very start. He may join it at any point during its progress and be held responsible for all that has been done before he joined and all that may be done thereafter during its existence and while he remains a member.

Simply stated, in using the partnership analysis, by becoming a partner, he assumes all the liabilities of the partnership including those that occurred before he became a member and similarly, each conspirator need not know the identity or the number of all his confederates. The conspirators need not have associated together. One of the conspirators may know only one other member of the conspiracy, but if he enters into an unlawful agreement with another member of the conspiracy, he becomes a party thereto; nor is it necessary that a conspirator receive any pecuniary benefit from his participation in the conspiracy as long as he in fact participated in it in the way in which I have instructed you.

The question is did a conspirator join the

others with an awareness of at least some of the basic purposes and aims of the conspiracy. If so, then he adopts as his own, the past and future acts of all the conspirators.

In determining whether a conspiracy existed, you should consider the acts and declarations of all the alleged participants. However, in determining whether a particular conspirator was a member of the conspiracy, you may consider only his own acts and statements. He can't be bound by the acts and declarations of other alleged participants unless and until you are satisfied beyond a reasonable doubt that a conspiracy existed and the conspirator you are then considering was one of its members.

In other words, your determination as to the participation in the conspiracy of each conspirator must be based upon what you find to have been his own actions, his own conduct or statements or declarations, his connection with the acts and conduct of other alleged conspirators and the reasonable inferences to be drawn therefrom.

Now, testimony concerning acts or statements of one alleged co-conspirator done or said in the absence of other alleged co-conspirators, although received without limitation against the alleged co-conspirator who did the

act or made the statement or omission, is received on a conditional or tentative basis. If you find beyond a reasonable doubt that a conspiracy existed and you find also beyond a reasonable doubt that a particular conspirator was one of its members, then the statements thereafter knowingly made and the acts thereafter knowingly done by any person likewise found by you to be a member of the conspiracy, can be considered by the jury as evidence in the case as to any conspirator found to be a member of the conspiracy, even though the statements and acts might have occurred in the absence and without the knowledge of that conspirator provided such statements and acts were knowingly made and done during the continuance of such conspiracy and in furtherance of some object or purpose of the conspiracy.

Thus, statements of any conspirators which are not in furtherance of conspiracy but which are made before its existence or after its termination, may be considered as evidence only against the person making them.

Now, a conspiracy, as I told you, once formed is presumed to continue until either its object is accomplished or there is some affirmative act of termination by its members. So too, once a member is found to be

1
2 a member of a conspiracy, he is presumed to continue his
3 membership therein until its termination.

4 The burden is upon that conspirator to satisfy you
5 by a burden of proof that he withdrew and disassociated
6 himself from it.

7 I told you there are two parts to the conspiracy
8 count and one of them is overt acts. If you should find
9 beyond a reasonable doubt that the conspiracy existed
10 and that the defendant was a member of the conspiracy,
11 you must then consider the third element and that is the
12 requirement of an overt act. The overt acts are not
13 separate charges, but part of the conspiracy count, and
14 you can't find the defendant guilty unless and until you
15 are convinced beyond a reasonable doubt that at least one
16 of the overt acts charged in the indictment was knowingly
17 and wilfully committed by at least one of the conspirators
18 and that at least one of those acts was committed in the
19 Southern District of New York.

20 The offense of conspiracy is complete when the
21 unlawful agreement is made and any overt act is done by a
22 conspirator to, in the language of the statute, to effect the
23 object of the conspiracy.

24 Thus an overt act is an act wilfully committed
25 by one of the conspirators in an effect to accomplish some

1 object of the conspiracy. The overt act need not be
2 a criminal act or an act which of itself constitutes an
3 objective of the conspiracy. It may be an act which
4 is innocent on its face, but it must be of such character
5 that it further promotes, aids, or assists in accomplishing
6 the purpose of the conspiracy as charged in the indict-
7 ment. It is not necessary for you to find that all
8 of the alleged overt acts were committed or that an overt
9 act involved a particular defendant. It is sufficient if
10 you find at least one of the overt acts charged in the
11 indictment was committed by a conspirator in furtherance
12 of the conspiracy.

13
14 There are 14 overt acts set forth in the
15 indictment and I will read them all to you.

16 "In furtherance of an to effect the object
17 of the conspiracy, the following overt acts, among others,
18 were committed by the defendants in the Southern District
19 of New York and elsewhere:

20 "(1) prior to September 21, 1976, the
21 defendant Joseph Anthony Martinez-Carcano, also known as
22 Tony, offered to arrange for the escape from custody at
23 MCC of Yolanda Sarmiento in exchange for \$25,000.

24 "(2) on or about September 21, 1976, the
25 defendants George D. Philip and Zulma Rosa Amy, also known
 as Vicki, went to Room 719 of the Ramada Inn, Eighth

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2 Avenue and 48th Street, New York, New York, and met
3 there with Rafael Rodriguez, a New York City police depart-
4 ment detective, acting in an undercover capacity and
5 another, and discussed with them the payment of a bribe
6 and the means by which they would effect the escape of
7 Yolanda Sarmiento, including the use of a wig, clothing
8 and false identification;

9 "(3) on or about September 21, 1976, the
10 defendant George D. Philip accepted \$5000 from Rafael
11 Rodriguez and gave it to the defendant Zulma Rosa Amy, also
12 known as Vicki, \$3000 of that money which she counted and
13 placed in her purse;

14 "(4) on or about September 27, 1976, the
15 defendant Yasin Wahid, also known as Coco, went to Room
16 719 of the Ramada Inn and met with Rafael Rodriguez,
17 and another, and told them the items they were to secure in
18 the escape of Yolanda Sarmiento;

19 "(5) on or about September 28, 1976, the
20 defendant Yasin Wahid, also known as Coco, went to Room
21 719 of the Ramada Inn and met with Rafael Rodriguez
22 and another and received a wig, a camera, a woman's pants
23 suit, a blouse and a pair of shoes;

24 "(6) on or about September 28, 1976, the
25 defendant Yasin Wahid took photographs of Rafael Rodriguez

and another in Room 719 of the Ramada Inn.

"(7) on or about September 27, 1976, the defendant Wahid stated to Rafael Rodriguez and another he had prepared a false identification card for Yolanda Sarmiento to be used by her in escaping from the MCC.

"(8) on or about September 30, 1976, the defendant Yasin Wahid, also known as Coco, handed to Rafael Rodriguez a letter from Joseph Anthony Martinez-Carcano, also known as Tony;

"(9) on or about September 30, 1976, the defendant Yasin Wahid, also known as Coco, went to Room 719 of the Ramada Inn and met there with Rafael Rodriguez and another, and discussed the escape of Yolanda Sarmiento;

"(10) on or about October 31, 1976, the defendant Joseph Anthony Martinez-Carcano, also known as Tony, placed three telephone calls to Rafael Rodriguez at Room 719 of the Ramada Inn and discussed with him the planned escape of Yolanda Sarmiento;

"(11) on or about October 4, 1976, the defendant Joseph Anthony Martinez-Carcano, also known as Tony, placed a telephone call to Rafael Rodriguez at Room 719 of the Ramada Inn and discussed with him the planned escape of Yolanda Sarmiento;

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"(12) On or about October 4, 1976, the defendant Carmen Cirilo, also known as Mina, and Brenda Virginia Cooke drove to the Pamada Inn and met Rafael Rodriguez;

"(13) on or about October 4, 1976, the defendant Brenda Virginia Cooke handed Rafael Rodriguez a green envelope;

"(14) on or about October 4, 1976, the defendant Carmen Cirilo, also known as Mina, and Brenda Virginia Cooke, drove with Rafael Rodriguez to the vicinity of the MCC, 150 Park Row, New York, New York, where they picked up Yolanda Sarmineto and drove away."

Again, I repeat, the three necessary elements, first, that a conspiracy existed as charged in the indictment; second, that the defendant knowingly and wilfully joined the conspiracy, and third, that one of the conspirators knowingly and wilfully committed at least one of the overt acts set forth in the indictment. You must be satisfied that all of these elements are established beyond a reasonable doubt.

I have used the words "knowingly and wilfully" in defining the elements of that conspiracy. A person acts knowingly if he acts voluntarily and intentionally and not because of any mistake or accident or other innocent

reason.

The purpose of adding the word "knowingly" was to be sure that no one would be convicted of an act done because of mistake or accident or other innocent reason. A person acts wilfully if he acts voluntarily and intentionally and with a specific intent to do something which the law forbids, that is to say, with bad purpose either to disobey or disobey the law.

The fact that a defendant may have acted foolishly or stupidly does not excuse conduct if in fact a person has acted knowingly and wilfully as I have defined that for you.

Now, if you should find beyond a reasonable doubt the conspiracy and the defendant was one of the conspirators in the conspiracy charged in the indictment, you may then consider defendant's defense of entrapment. Defendant asserts that as a defense to the charges of the indictment, that he was a victim of entrapment by an agent of the Government.

The word "entrapment" is a legal term. It has a technical meaning, not that of popular speech or colloquial ordinary usage. I must therefore explain it to you as it is used in the law.

A basic feature of entrapment is that the idea

or design of committing the crime charged originated with a Government agent rather than with the defendant.

For our purpose here, you are to consider that Yolanda Sarmiento was an agent of the Government. Now, there are two questions to be addressed considering the defendant's entrapment defense.

The first question is whether defendant has established by a fair preponderance of the credible evidence that the Government through its agent induced him to commit the offenses.

IN that regard, a fair preponderance of the credible evidence means the greater part of the evidence you find believable. That phrase refers to the quality of the evidence, the weight and the effect that it has on your minds.

If in the first instance the defendant meets the burden of proving Government inducement, a term which I will explain to you shortly, the burden is then shifted to the Government to prove the defendant's predisposition to commit the crime beyond a reasonable doubt.

I will define predisposition for you in a moment.

It is not simply this defense of who spoke to whom first, but this is the legal definition of the term of

entrapment as I am giving it to you.

The fact that the Government official or Government agent merely afforded an opportunity to one who is ready and willing to violate the law when the opportunity presents itself, does not constitute entrapment. However, in their efforts to enforce the law, Government agents may not entrap an innocent person who except for the Government's inducement would not have engaged in the criminal conduct charged.

Entrapment occurs only when the criminal conduct was the product of the creative activity of the agent, that is, if it was initiated, incited, induced or lured an otherwise innocent person to commit a crime and to engage in criminal conduct. If that occurs, the Government may not avail itself of the fruits of this instigation. In this regard, defendant asserts he was induced to violate the law by the activities and communications of Yolanda Sarmiento who was a Government agent.

As I have indicated to you previously, the defendant has the burden of establishing by a fair preponderance of the credible evidence that this was so, but that again does not end the question because if that is so, then the question is whether or not the defendant was ready

1 and willing to violate the law when the opportunity
2 presented itself in which case there is no entrapment.
3

4 If the prosecution has satisfied you beyond
5 a reasonable doubt that the defendant was ready and willing
6 to commit the offense charged and was merely awaiting
7 a favorable opportunity to commit them, then you may find
8 that the Government did no more than furnish a convenient
9 opening for the criminal activity in which the defendant
10 was prepared to engage.

11 In such circumstances you may find that the
12 Government's agent or informer has not seduced an innocent
13 person, but has only provided the means for the defense
14 to effecuate or realize his own then existing purpose.

15 In other words, the defendant was then predis-
16 posed to commit the offense.

17 On the other hand, if the evidence in the
18 case should leave you with a reasonable doubt whether the
19 defendant would have committed the offense charged without
20 the Government's inducement, then it is your duty to find
21 him not guilty.

22 Now, in connection with the entrapment defense,
23 it is defendant's contention that Yolanda Sarmiento entrapped
24 him into committing the acts charged in order to benefit
25 herself in terms of receiving a lenient sentence in

1 cooperation with the Government. Defendant's position
2 is based on the assumption that the more Sarmiento did
3 as an agent for the Government, that is, the more cases
4 she created for the Government, the greater her expecta-
5 tion would be for lenient treatment for herself by the
6 Government.
7

8 This defense of entrapment I am not going to
9 repeat to you, but it is as to all three counts charged in
10 the indictment. I don't think it is necessary for me
11 to repeat it each time.

12 That concludes my charge to you on the con-
13 spiracy count which is a separate and distinct offense
14 from what is called the objects of the conspiracy.

15 Count 2 charges as an object of the conspiracy
16 and as a substantive count, that the defendant violated
17 18 United States Code, Section 201C and Section 2 of 18,
18 United States Code, which relates to aiding and abetting.

19 The pertinent provision of the law which is 201C
20 reads in part as follows:

21 "Whoever being a public official directly or
22 indirectly corruptly asks, demands, exacts, solicits,
23 seeks, accepts, receives or agrees to receive anything of
24 value for himself or for any other person or entity in
25 return for:

"(1) being influenced in the performance of any official act, or (2), being influenced to commit or aid in committing or to collude in or to allow any fraud or make opportunity for the commission of any fraud on the United States, or (3), being induced to do or omit to do any act in violation of his official duty, commits a crime."

Now, Section 2 of the Title 18 reads as follows:

"Whoever commits an offense against the United States or aids, abets, or counsels, commands, induces, or procures its commission is punishable as a principal."

In this case the Government does not contend that the defendant Martinez himself accepted a bribe, but that he aided and abetted two Federal correction officers, namely Philip and Wahid, in their agreement to and acceptance of a bribe.

It reads as follows:

"The grand jury further charges on or about the 21st day of September, 1976, in the Southern District of New York, the defendants George D. Philip and Yasin A. Wahid, also known as Coco, being public officials, to wit, correctional officers of the MCC, United States Bureau of Prisons, United States Department of Justice, directly and indirectly did corruptly ask, demand, exact,

solicit, seek, accept, receive and agree to facilitate things of value, to wit, money in the amount of \$5000 for themselves and others in return for being influenced in their performance of official acts, being influenced to commit and aid in committing and to collude in and to allow a fraud and make opportunity for the commission of a fraud on the United States, and being induced to do and omit to do acts in violation of their official duties, to wit, instigating, aiding, assisting and permitting the escape of an inmate, Yolanda Sarmiento from custody at MCC.

"(12), the defendant Cirilo unlawfully, wilfully and knowingly did aid,, abet, counsel,demand, induce, procure George D. Philip and Yasin Wahid also known as Coco in the commission of the offense alleged in paragraph 11."

To find a defendant guilty of the crime of aiding and abetting the acceptance of a bribe, you must find beyond a reasonable doubt the following: First, that on or about the dates charged in the indictment, the defendants, George D. Philip or Yasin Wahid, wilfully and knowingly directly or indirectly corruptly asked, accepted, received or agreed to receive the amount of money stated therein in the count.

Second, that the defendants George D. Philip or Yasin Wahid, asked, accepted or agreed to receive the money in return for (1), being influenced in the performance of any official act or (2), being influenced to commit or aid in committing or making an opportunity for the commission of any fraud on the United States, or (3), being induced to do or omit to do any act in violation of his official duty.

In this case, the Government has charged that Philip and Wahid accepted money from Detective Rodriguez in exchange for their assistance in the escape of Yolanda Sarmiento from the Manhattan Correctional Center.

Third, that on or about the dates the defendants George Philip and Yasin Wahid accepted or agreed to accept a bribe as charged, they were each public officials.

Fourth, that defendant Joseph Martinez aided or abetted Correction Officers Philip and Wahid in accepting, or agreeing to accept a bribe.

An essential element of this crime is that defendant, persons whom the defendant aided and abetted, if you so find it to be in accepting a bribe, must have been a public official.

I charge you as a matter of law that a corrections officer of the United States Bureau of Prisons

is a public official within the meaning of the statute charged with respect to Counts 2 and 3 of the indictment.

You must find, although there seems to be a little dispute about the occupations of Philip and Wahid at the time involved, you must find that they were public officials at the time charged in those counts.

Now, I have said that defendant Wahid was charged with violating Counts 2 and 3 as an aider and abettor. It is not necessary for the Government to show that the defendant physically committed the offense charged himself.

Section 2 of Title 18 provides that a person who aids, abets, counsels, commands, induces or procures the commission of an offense against the United States, is as equally punishable as a principal. This means that not only is the person who actually commits an illegal act, that is, the principal punishable, but anyone who aids and abets, counsels, commands, induces or procures the commission of that illegal act is likewise punishable.

Accordingly, you may find the defendant Martinez guilty of the offense charged in these two counts, 2 and 3, if you find beyond a reasonable doubt that the offense was committed and that the defendant aided and abetted in its commission. To aid and abet does not

mean knowing that a crime is being committed even if one is present during its commission. That alone is not sufficient.

In order to find that a defendant aided and abetted another to commit a crime, you must be satisfied beyond a reasonable doubt that he knowingly and in some substantial measure associated himself with the venture, that he participated in it as something he wished to bring about, that he sought by his own action to make it succeed. In other words, if one is fully aware of what he is doing, plays a significant role in facilitating a transaction prohibited by law, he is equally guilty as the person who directly performs the illegal act even though the latter played a greater or much larger role in the perpetration of the crime.

The evidence, or the defendant's participation may be circumstantial, from which you may conclude that a defendant is an aider and abettor, was a participant in the crime charged.

A single act may come within the prohibition of the aiding and abetting law.

Whether or not one aided or abetted another to commit a crime must be determined solely upon the alleged aider and abettor's own acts, conduct and statements.

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2 As I have indicated to you, I will not repeat
3 the defense of entrapment which has been put forward here
4 for your consideration by the defendant as to this count
5 also.

6 I have already explained to you in a conspiracy
7 count, the entrapment includes elements of inducement
8 and predisposition which I have already explained.

9 The third count of the indictment charges the
10 defendant with violating 18 United States Code, Section
11 752(a) as an aider and abettor under Section 2 of 18 U.S.C.
12 The main section provides as follows:

13 "Whoever instigates, aids or assists the escape
14 or attempt to escape of any person arrested upon a warrant
15 or other process issued under any law of the United States
16 or committed to the custody of the Attorney General or
17 to any institution or facility by his direction, shall,
18 if the custody or confinement is by virtue of an arrest
19 on a charge or felony of any offense is guilty of a crime,"
20 and the indictment reads as follows:

21 "Count 3 of the grand jury further charges on
22 or about the 4th day of October, 1976, in the Southern
23 District of New York, Joseph Anthony Martinez-Carcano, also
24 known as Tony, George D Philip, Yasin Wahid, also known
25 as Coco, Zulma Rosa Amy, also known as Vicki, Carmen Cirilo,

also known as Mina, and Brenda Virginia Cooke, the defendants, did instigate, aid and assist the escape from custody Yolanda Sarmiento, who was committed to the custody of the Attorney General by virtue of an arrest on a charge of, to wit, violation of the Federal Narcotics Laws, and who was at that time incarcerated at MCC at the direction of the Attorney General."

The elements with respect to this charge of Count 3, the Government must prove beyond a reasonable doubt the following: On or about October 4, 1976, Yolanda Sarmiento was under the lawful custody at MCC; that on or about October 4, 1976, Yolanda Sarmiento escaped from custody; third, that the defendant instigated, aided or assisted the escape and that the defendant acted wilfully and knowingly.

You must find beyond a reasonable doubt that Yolanda Sarmiento was in lawful custody on or about October 4, 1976, at the Manhattan Correctional Center by virtue of an arrest on a felony charge or conviction of any offense.

You have heard testimony with respect to that. I am not going to review it for you.

With respect to the second element, namely, instigating or assisting escape, you must find beyond a

reasonable doubt that Yolanda Sarmiento escaped from MCC on or about October 4, 1976. Escape means simply to leave the institution without the authority to do so.

I already explained to you the third element that the defendant instigated, aided or assisted that escape and also that he acted wilfully and knowingly, as previously indicated to you.

Again, as I have indicated to you before, the defendant asserts entrapment and in that connection, I have already explained that it includes the element of inducement and predisposition which had been explained to you.

Now, there is another theory with respect to the liability for acts and statements of co-conspirators with respect to the conspiracy count and other counts of the indictment.

If you find under the principles that I have set forth for you that the conspiracy existed, then however limited you find, and if you should find that the defendant was a member of that conspiracy, however limited you find his individual role in furthering the objectives of the conspiracy, he is responsible for all that was done in furtherance of the conspiracy and during its continuance and during the time he was a member of the conspiracy.

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2 Once you are satisfied beyond a reasonable
3 doubt that a conspiracy existed, and that the defendant
4 was a member, if you do so find, then the acts,
5 including criminal acts and declarations of any other person
6 who you also find was a member of the conspiracy made
7 by such co-conspirator during the existence of the conspiracy
8 and in furtherance of its objectives are considered the
9 acts and declarations of the defendant even though he was
10 not present, if he was a member of the conspiracy at the
11 time of the commission of those acts.

12 Therefore, if you find beyond a reasonable doubt
13 that the defendant participated in the conspiracy charged in
14 Count 1 of the indictment, then you may find him guilty
15 on Counts 2 and 3 of the indictment if you find beyond
16 a reasonable doubt that the crimes charged in Counts 2
17 and 3 were committed by one of the co-conspirators during
18 and in furtherance of the conspiracy and while the defendant
19 was a member of the conspiracy.

20 I have a little bit more here, but that
21 concludes my charge as to the specific offenses set forth.
22 It seems some time or other the words reasonable doubt
23 has to be defined.

24 In describing the elements of the various
25 offenses, I told you the Government must establish each

of those elements by proof beyond a reasonable doubt.

Then you naturally ask what is a reasonable doubt. The words almost define themselves. That there is a doubt founded in reason and arising out of the evidence or lack of evidence. It is a doubt which a reasonable person has after carefully considering all of the evidence. A reasonable doubt is not a vague or speculative or imaginary doubt. It is not caprice, whim or speculation. It is not an excuse to avoid the performance of an unpleasant duty. It is not sympathy for a defendant.

A reasonable doubt is a doubt which appeals to your reason, your common sense, your experience and your judgment. It is a doubt which could cause a reasonable person like yourselves to hesitate to act in relation to your own important private affairs. Mere suspicion will not justify conviction. Suspicion is not a substitute for evidence, nor is it sufficient to convict if you find that the circumstances merely render an accused probably guilty.

On the other hand, it is not required that the Government must prove guilt beyond all possible doubt but the proof must be of such convincing character that you would be willing to rely and act on it in the important affairs of your own life.

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In sum, a reasonable doubt exists when after a fair and impartial consideration of all the evidence before you you can candidly and honestly state that you do not have an abiding conviction that the defendant is guilty of the charge.

Now, I explained during the course of this charge the words "knowledge" and "intent" as an element of the crime. An act or failure to act is knowingly done if done voluntarily and intentionally and not because of mistake or other innocent reason.

A further comment may be helpful in your deliberations. Knowledge and intent exists in the mind. We all know that you can't open up somebody's head and discover what is going on in a person's mind that way. It can't be done. The only way you have for arriving at a decision on knowledge and intent is for you to take into consideration all the facts and circumstances shown by the evidence and to determine from all such facts and circumstances whether the requisite knowledge and intent were present at the time in question. Direct proof is unnecessary. Knowledge and intent may be inferred from all of the surrounding circumstances.

At the beginning of the trial I told you that one of your most important functions would be to consider

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and observe the witnesses as they testified and determine their credibility. You as the jurors are the sole and exclusive judges of the credibility of the witnesses. You and you alone must determine what weight their testimony deserves.

I gave you some preliminary instructions and perhaps I will repeat and expand upon them at this time.

You shouldnot be influenced by mere number of witnesses called by either side. The weight of the evidence is not determined by the number of witnesses who testified on either side, but you should consider all the facts and circumstances in evidence to determine where the truth lies.

In assessing credibility, you should carefully scrutinize the testimony given, the circumstances under which each witness testified and every matter in evidence which tends to indicate whether the witness is worthy of belief. The degree of credit to be given a witness should be determined by his demeanor, his relationship to the controversy and the parties, his bias or impartiality, the reasonableness of his statements, the strength or weakness of his recollection viewed in the light of all the other testimony and the attendant circumstances in the case, and the extent to which, if at all, each witness is

either supported or contradicted by other evidence.

How did the witness impress you? Did the witness' version appear straightforward and candid? Or was there an attempt to hide some of the facts. Is there a motive to testify falsely.

In passing upon the credibility of a witness, you take into account inconsistencies or contradictions as to material matters in that person's own testimony or any conflict with that of another witness.

Also any inconsistencies or omissions in prior testimony or any prior statement of material matters as to which that person may have testified upon a trial.

Inconsistencies in the testimony of a witness or between the testimony of different witnesses may or may not cause the jury to discredit such testimony. Two or more persons witnessing an incident or transaction may see or hear it differently. Innocent misrecollection, failure of recollection is not an uncommon experience. A witness may be inaccurate, contradictory, untruthful in some respects, yet entirely credible in the essentials of that person's testimony.

In weighing the effect of discrepancies, consider whether it pertains to a matter of importance or an unimportant detail, and whether the discrepancy

results from innocent error or wilful falsehood.

If you find that any witness has testified falsely, you can do one of two things. You can reject all of that witness' testimony on the ground it is all tainted by falsehood and that none of it is worthy of belief, or you can accept that part which you believe to be true and reject that part which you believe to be tainted by falsehood.

Should you find that all or part or any part of a particular witness' testimony was false, you may not of course infer that the opposite of that testimony is the truth, unless there is other evidence to that effect. Any testimony rejected by you as follows is no longer in the case insofar as any finding you may make is concerned.

I told you earlier on, an inference is a conclusion which reason or common sense leads you to draw from the facts which you find have been proved.

Thus a finding of fact may not be established merely by a negative inference arising from your disbelief and rejection of any testimony.

In passing upon credibility, the ultimate question for you to decide is whether the witness told the truth before you. It is for you to say whether that person's testimony at this trial is truthful in whole or

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in part in light of the witness' demeanor, explanation
and all the evidence in the case.

In assessing the credibility of
a witness, you may or may not take into consideration evi-
dence that the witness has in the past been convicted of
certain crimes in determining that witness' credibility.
While prior convictions may be a factor affecting credibility,
it by no means follows that the witness is for that reason
necessarily untruthful. Prior convictions are just one
of a number of factors which may be considered when you
determine that person's credibility. The ultimate
question always is, how did the witness or did the witness
testify truthfully before you.

With respect to the testimony of Yolanda
Sarmiento, it is the defendant's contention, but nonetheless
something that you must find whether or not she testified
falsely against Martinez. If she did, it is for you to
determine, but the contention is and denied by the Govern-
ment that she testified for reasons of her own such as to
reduce her time of imprisonment and to avoid certain prose-
cutions by proviing other targets for possible prosecution.

Now, evidence relating to any statement claimed
to have been made by the defendant outside of court and
after a crime is committed should be considered with

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2 caution and weighed with care. All such evidence should
3 be disregarded entirely unless the evidence in the case
4 convinces the jury beyond a reasonable doubt that the
5 statement was knowingly made.

6 A statement is knowingly made, as I told you
7 before, if done voluntarily and intentionally and not because
8 of mistake, accident or other reason.

9 In determining whether any statement claimed
10 to have been made by a defendant outside of court after a
11 crime was committed was knowingly made, the jury should
12 consider the training, education, occupation, physical and
13 mental condition of the defendant and all the other cir-
14 cumstances in evidence surrounding the making of the
15 statement.

16 With respect to the credibility, there is an
17 additional matter that of course should be brought to your
18 attention. Whereas here a defendant testifies, it is your
19 function as jurors to assess his credibility in the same
20 manner as you assess the credibility of any other witness.

21 You recall I instructed you that one factor to
22 be considered in judging credibility was any interest a
23 witness may have in the outcome of a trial. Obviously a
24 defendant has a personal interest in the outcome of a
25 trial.

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In appraising his credibility, you may take the fact of interest into consideration, It no means follows, however, simply because a person has an interest in the result, that he is not capable of telling a straight-forward or truthful story. It is for you to decide to what extent if at all his interest in the outcome of this case has affected his testimony.

The defendant here has offered evidence of reputation for truth and veracity. You should consider such evidence along with all the other evidence in the case. Evidence that a defendant's reputation for truth and veracity has not been discovered or those traits of the defendant's character have not been questioned may be sufficient to warrant an inference of good reputation to those traits or character. Evidence of defendant's reputation consistent with those traits and character order involved in the commission of a crime charged may give rise to a reasonable doubt, since you may think it improbable that a person of good character in respect to those traits would commit such a crime.

There has been evidence in this case, some of which has been presented to you over the tape recorder here. A lot of it which is in exhibits which have been submitted to you and which have not been read to you. On

several occasions the evidence shows that when Detective Rafael Rodriguez talked with defendant Martinez, Philip, Wahid and Vicki, that those conversations were electronically recorded. There should be no doubts or reservations on your mind with regard to this subject. I am instructing you that the use of these devices within the manner prescribed in this case is entirely within the law and violates no one's rights. This is so essentially because Detective Rodriguez, who was a participant in the conversation, consented to have them recorded. Accordingly, the use of these devices was a proper investigative technique and you should not have any reservations about the legality of these recordings and these transcripts which are in evidence.

Now, there are other named defendants in this case and the fact as it has come out here in testimony that they have pleaded guilty to certain charges in the indictment should not affect the determination of the guilt or innocence of this defendant. It is your duty to give separate, personal consideration to the case of this defendant and you should analyze only that evidence in the case with respect to him under the circumstances which I have previously described to you.

Defendant is entitled to have his case

determined from evidence as to his own acts, statements and conduct, and any other evidence in the case which may be applicable to him.

Now, there was a statement made to you in summation with respect to which charge was more serious than the others. At the time I instructed you you should not consider that in any way whatsoever, nor should you. I am re-instructing you on that. I am mentioning it at this point because of this.

In your deliberations, please do not discuss the question of possible punishment. That is a matter that rests on my conscience and my conscience alone, because the Judge and the Judge alone is the one who has the obligation of imposing sentence when and if guilt is determined. If you do discuss it among yourselves, you are encroaching upon my function and I ask you not to do it. Your function is to consider the facts and to determine the facts and my function is to pass upon the law and in the event of conviction, to impose sentence.

If you find on all the evidence that the evidence respecting this defendant needs a reasonable doubt as to his guilt, you should not hesitate for a moment to return a verdict of not guilty. However, on the other hand, if you find beyond a reasonable doubt that the

law has been violated as charged, you should not hesitate, because of sympathy or because of any other reason to render a verdict of guilty.

The verdict must represent the considered judgment of each juror. Your verdict must be unanimous. It is your duty as jurors to consult with one another and to deliberate with a view to reaching an agreement, if you can do so, without violation to individual judgment. Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence with your fellow jurors.

In your deliberations, do not hesitate to examine your own views and change your opinion if convinced it is erroneous, but do not surrender your conscientious opinion merely for the purpose of returning a verdict. You are not partisans, you are judges. You are the sole judges of the facts. Your sole interest is to ascertain the truth from the evidence in the case.

If it becomes necessary for you to communicate with the Court during your deliberations, you may send a note by the marshal, signed by your foreperson or by one or more members of the jury. No member of the jury should ever attempt to communicate with the Court by any means other than a signed writing, and the Court will never

1 communicate with any member of the jury on any subject
2 touching the merits of the case other than in writing or in
3 open court.
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5 You will note from the oath to be taken by the
6 marshal that he too, as well as all other persons, are
7 forbidden even to communicate in any way or manner with any
8 person of the jury on any subject touching the merits of
9 the case.

10 Bear in mind also you are not to reveal to any
11 person, not even to the Court how you stand numerically or
12 otherwise on the question of the guilt or innocence of
13 the defendant unless and until after you have reached a
14 unanimous verdict.

15 I think I ought to further caution you that
16 nothing said in these instructions is to suggest or convey
17 in any way or manner in any way an intimation as to what
18 verdict I think you should find. What the verdict shall be
19 is the sole and exclusive duty and responsibility of you,
20 the members of the jury.

21 Counsel have the obligation, since I have been
22 charging you on law, to take exceptions to any parts of the
23 charge that I have given to you or to make any requests
24 to me in the event they feel I have eliminated or omitted
25 some instructions.

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2 If you will bear with us just a minute,
3 I will see if this will take any time and if not --

4 (At the side bar.)

5 MR. GALLINA: Your Honor, I have about four
6 pages of exceptions and I would like your Honor to excuse
7 the jury. I don't see of any way of my putting them on
8 the record at the side bar.

9 (In open court.)

10 THE COURT: Members of the jury, this will take
11 a little bit of time. If you will retire to the jury
12 room. Don't discuss the case.

13 (Jury left the courtroom.)

14 MR. GALLINA: Your Honor, I would object
15 first to your Honor's emphasis on the admonishment of counsel
16 because obviously I was the only counsel admonished,
17 and to the fact that the manner in which you instructed
18 the jury about such admonishments and objections.

19 Second, I would object to your Honor describing
20 one of the defendant's witnesses, Cardona, as a convict,
21 convicted of murder, and describing the Government's witness,
22 Mr. DePetris, as an Assistant United States Attorney,
23 and not describing any of the other defendant's witnesses
24 by their titles.

25 Third, I would object to your Honor instructing
the jury that -- wrongly instructing the jury that the

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2 defendant put into issue his stupidity as being a legal
3 excuse insofar as being knowingly aware of the crime.
4 We did not. We put it in to show he was stupidly receptive
5 to Sarmiento's instigation and I would ask that your
6 Honor so instruct the jury that that was the defendant's
7 theory and they should consider that evidence for
8 that purpose. It was never offered for any other purpose
9 and it is a distortion to emphasize that.

10 I then, your Honor, object -- I would ask
11 your Honor to again instruct the jury to the fact that
12 Sarmiento is to be understood and to be acknowledged by the
13 jury as an agent of the Government for the purpose of
14 their determination of the facts in this case, because
15 your voice dropped when your Honor hit that point. I
16 could hardly hear it and I could see the jury straining to hear
17 what your Honor was saying at that point.

18 I would object to your Honor's statement they
19 are not to consider between the defendant and Mrs. Sarmiento
20 who spoke to whom first. That is an obvious important
21 element of the defense of entrapment. If the approach
22 was made by Mrs. Sarmiento to the defendant first, it is
23 a very obvious important piece of evidence and to instruct
24 the jury they are not to give any weight to it or to
25 consider it is not correct.

1 I would especially object to your Honor's
2 instruction in that area because it is clear that the
3 Government's position is that their position is that Mrs.
4 SArmiento never approached the defendant and never
5 approached the defendant because he was predisposed to
6 commit any crime. That was not the Government's position
7 in this case, and I object to your Honor's emphasis in
8 your instruction as to that point.
9

10 I can understand your Honor mentioning it,
11 but the whole charge as to entrapment centered itself
12 around the defendant's predisposition to commit such a
13 crime when the Government's position was they never offered
14 any evidence that he was predisposed to commit the crime
15 and in fact that issue as a factual issue has nothing
16 before the jury.

17 I object to Count No. 2. Count No. 2 being sub-
18 mitted by your Honor to the jury for these reasons; First,
19 that Mr. Wahid and Mr. Philip were never shown by proof
20 beyond a reasonable doubt to be Correction officers of the
21 MCC or the Bureau of Prisons under the United States
22 Department of Justice. There was no evidence as to that.

23 Second, that it was in violation of their
24 duties. There was no reading of any law, regulations or
25 duties to show it was a violation of their official duties

to do what they did.

THE COURT: To take a bribe?

MR. GALLINA: I don't think you can presume anything.

THE COURT: Count 3 is a bribe.

MR. GALLINA: Count 2 I am speaking of.

THE COURT: Count 2 is a bribe. 3 is escaping.

MR. GALLINA: Count 2 charges that you must prove that Mr. Philip and Mr. Wahid were Correction officers of the MCC, that the MCC was a facility of the Bureau of Prisons under the cognizance of the United States Department of Justice. That is an element of the crime that was never proven.

Second, it was never proven that Mr. Wahid or Mr. Philip at any time violated any specific instructions, duties, laws, regulations in what they did. There was no evidence offered as to that.

As to Count 3, I move to dismiss that count or have your Honor withdraw that count from consideration of the jury because, your Honor, there was no proof that Sarmiento was at any time committed to the custody of the Attorney General by virtue of any arrest on any felony. There was no evidence as to that. I feel that is a necessary element.

1 The next necessary element in that crime,
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3 there is no proof she left without authority. In fact if
4 she was an agent of the Government and she was working
5 as an agent for the Government at the time, it was clear
6 she was working as an agent of the Government, that she
7 was leaving with the knowledge of the Government. She
8 was leaving with the knowledge of the Government officers.
9 There were Government officers waiting for her outside
10 for her to get into a Government car wearing Government
11 clothes, she could not as a matter of fact even if it was
12 attempted to be proven, to have left without authority.

13 THE COURT: What happens when you make a sale
14 to a narcotics agent?

15 MR. GALLINA: But there is drugs being sold
16 to a narcotics agent.

17 THE COURT: All right. The only thing that
18 surprises me is that you have looked at this charge before-
19 hand and now you come in and raise all of this. You saw
20 the witness list.

21 MR. GALLINA: It does not relate to that.

22 THE COURT: It has it down in here about what
23 positions these people had and we will mark this as a
24 Court exhibit.

25 MR. GALLINA: It says a convict, but not that --

1 your Honor added it gratuitously.

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2 (Court Exhibit 1 marked.)

3 MR. GALLINA: I have one further exception
4 to your Honor's charge on credibility.

5 Your Honor instructed in some fashion, which
6 I didn't fully understand, as to the defendant's offer of
7 proof that Sarmiento's credibility was to be affected or
8 the credibility was to be affected by her motive to lie
9 based on her desire to aid her own future sentencing. I
10 don't believe it was clear and I also don't believe that
11 your Honor equated it fairly with the same instruction
12 as to the credibility as to the defendant, and I believe
13 your Honor shrugged your shoulders and shook your head
14 when you evaluated the defendant's posture and position
15 that her credibility was also to be considered, insofar
16 as the motive to lie, vis-a-vis her future sentencing.

17 THE COURT: I take issue with the shrugging
18 of the shoulder or any other expression or tone of voice,
19 Mr. Gallina. As far as I can see it is completely without
20 merit. You can't get up here and deliver a charge in
21 an hour and fifteen or twenty minutes remaining in a
22 rigid position and maintaining a monotone or anything like
23 that. It is just impossible.

24 I also noticed when I happened to glance your way
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1 that you had your hand behind your head, you were leaning
2 back and rolling around on your chair, which you have done
3 consistently, with facial expressions and nodding of your
4 head and various emotional facial expressions throughout
5 the course of this entire trial.
6

7 MR. GALLINA: I take exception to that.

8 THE COURT: It is so. It has happened here in
9 this trial constantly.

10 MR. GALLINA: I never had any Judge say that
11 to me before.

12 THE COURT: You have gotten away with a lot
13 because you have done it before me previously.

14 MR. GALLINA: You didn't mention it during that
15 trial.

16 THE COURT: I am mentioning it now and how do
17 you expect a Judge to sit up here in a monotone for an hour
18 and fifteen minutes and not move his head or his shoulders.

19 MR. GALLINA: I don't think your Honor meant
20 it in any way. I think the effect was erroneous to
21 the jury. I don't think your Honor meant it intention-
22 ally. If I did, I would have objected at the moment it
23 happened. I just think it was unintentional.

24 THE COURT: Anything else?

25 MR. GALLINA: Yes.

1 THE COURT: Let's get on with it.

2 MR. GALLINA: I object to your Honor singling
3 out the single innocuous statement in summation as to what
4 is the most serious charge. It is obvious the most serious --

5 THE COURT: You have no right whatsoever to
6 bring that up, absolutely none. In fact your first
7 comment about admonishing of counsel, I did that to attempt
8 to do away with the misbehavior on your part throughout
9 this entire trial, and I attempted in every way possible
10 by doing that to get this jury to give your client a fair
11 deal and not take out on your client your behavior in this
12 case, and I felt that was the only way to do it.

13 MR. GALLINA: I have no further objections.

14 THE COURT: Any requests?

15 MR. GALLINA: My requests, of course, would be
16 in keeping with my objections.

17 THE COURT: Do you have any requests? You
18 gave me several requests before. Do you have any other
19 additional requests?

20 MR. GALLINA: As I have asked, you will re-
21 emphasize what I have asked for. I will ask your Honor to
22 reinstruct the jury --

23 THE COURT: Insofar as they are exceptions and
24 requests, I decline to charge.
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2 MR. SIEGEL: Your Honor, we had submitted
3 a charge on the use of informants and which your Honod
4 didn't use.

5 THE COURT: She is an agent really, isn't she?

6 MR. SIEGEL: In the legal sense.

7 THE COURT: I don't think she is an informant
8 in a case like this.

9 MR. TENDY: She is in the sense that she brought
10 these facts to the attention of the Government. We then
11 utilized her services to further the investigation.

12 THE COURT: But she was an agent at the time.

13 MR. TENDY: I think every informant in that sense
14 is an agent.

15 THE COURT: She was an agent in the sense
16 that she was during this period of time -- wasn't she
17 during this period of time giving information to the
18 Government with respect to narcotics transactions that she
19 was involved in?

20 MR. TENDY: With respect to other matters, yes.

21 THE COURT: For that purpose she was an agent
22 and not an informant.

23 MR. TENDY: The minute they begin to impart
24 information we call them agents, but they are also
25 informants.

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2 THE COURT: Under the circumstances of this
3 case, she was an agent and not an informant. I consciously
4 eliminated from my charge that informant charge.

5 MR. TENDY: What she was doing here was supplying
6 information.

7 THE COURT: I will refuse to charge.
8 Bring in the jury.

9 (Jury present.)

10 THE COURT: I do want to express my appreciation
11 to both alternates. Fortunately our other 12 jurors are
12 intact and we will not need your services, but it was most
13 important for you to be here and I appreciate the coopera-
14 tion you have given to the Court. We have had some hard
15 hours we don't usually keep, and as I say, you paid full
16 attention to everything that went on and I wish to express
17 to you personally my thanks for your attention in this
18 case.

19 You are entitled, as I said before, and you
20 will have available to you as you go into the jury room
21 the indictment itself. If you want any exhibits or if
22 you want any part of the testimony or any part of the
23 charge reread to you, if you send a note, we will try and
24 comply. If there is any specific part that you want
25 of the testimony or of the charge, if you can make it as

specific as possible, it will enable us to locate it with a lot more alacrity than if we get just a general request. We do not have a transcript of the minutes of this hearing, so the court reporter has to go back in his notes, so as best you can, if you do require any of that, specify it with as much particularity as possible.

While it has been the custom, it is by no means required that the person occupying seat Number 1 become -- and I choke on this word -- the foreperson of the jury, but you have the right to select your own foreperson and conduct your deliberations in whatever way you desire to do.

I have some control in connection with time limits and so forth, but as I say, if you want any of the exhibits, court testimony or charge, be as specific as you can.

(Alternate jurors excused.)

THE COURT: Swear the marshal.

(Marshal duly sworn.)

THE COURT: Will the jury please follow the marshal.

(At 3:30 P.M. the jury commenced its deliberations.

THE COURT: If we stand by, we do get requests

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2 fairly early, so if you stand by for a few minutes.

3 (Recess.)

4 (At 3:55 P.M. a note was received from the
5 the jury and marked Court Exhibit 2.)

6 (Court Exhibit 2 marked.)

7 (In open court; jury present.)

8 THE COURT: I have received the following
9 note, and the reason I call you back in is because I am
10 not -- it is not appropriate for me to send in to you my
11 charge. I can send in the transcripts and they will go
12 to you when you return.

13 The note reads as follows: "Transcripts read
14 to us about Tony Martinez' conversations with Rodriguez".

15 Counsel will get those out and we will send them
16 in through the marshal.

17 The second part of your note is "Entrapment.
18 Please send in the Judge's definition, Ann Kaplan, Chair
19 Person."

20 I will read it to you. It may not be exactly
21 as I read it to you before because sometimes I do interpose
22 things, but this is the essential and the charge of
23 entrapment which you must consider.

24 The defendant asserts as a defense to the
25 charges that he was the victim of entrapment by an agent of

1 the Government. The word "entrapment" that I have just
2 used is a legal term. It has a technical meaning, not that
3 of popular speech or colloquial ordinary usage. Therefore
4 I shall explain to you the meaning of entrapment as
5 it is used in the law.
6

7 A basic feature of entrapment is that the
8 ideal design of committing the crimes charged originated
9 with a Government agent rather than with a defendant. In
10 this connection, I charge you for the purpose of considering
11 the defendant's claim of entrapment, you are to consider
12 Yolanda Sarmiento as an agent of the Government.

13 There are two questions to be considered in
14 considering the defendant's entrapment defense. The first
15 question for you to determine is whether the defendant
16 has established by a fair preponderance of the credible
17 evidence that the Government through its agent, namely,
18 Yolanda Sarmiento, induced him to commit the offenses.
19 A fair preponderance of the credible evidence means the
20 greater part of the evidence you find believable. The
21 phrase refers to the quality of the evidence, the weight
22 and the effect that it has on your mind.

23 If the defendant meets the burden of proving
24 Government inducement, a term which I will explain to you
25 shortly, the burden is then shifted to the Government to prove

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2 defendant's predisposition to commit the crime beyond
3 a reasonable doubt and I will also redefine for you
4 predisposition.

5 As to the meaning of inducement, the fact that
6 the Government agent or a Government agent merely afforded
7 an opportunity to one who is ready and willing to violate
8 the law when the opportunity presents itself, does not
9 constitute entrapment. However, in their efforts to
10 enforce the law, a Government agent may not entrap an
11 innocent person who, except for the Government's inducement
12 wouldnot have engaged in the criminal conduct charged.
13 Entrapment occurs only when the criminal conduct was the
14 product of the creative activity of the agent, that is, if
15 the agent initiated, incited, induced, persuaded or lured
16 an otherwise innocent person to commit a crime and to engage
17 in criminal activity and if that occurs, the Government
18 may not avail itself of the fruits of this instigation.

19 Again, I tell you, that the defendant has the
20 burden of establishing by a fair preponderance of credible
21 evidence that he was induced to commit the offenses.

22 I have used the word "predisposition". If the
23 prosecution has satisfied you beyond a reasonable doubt
24 that the defendant was ready and willing to commit the
25 offenses charged and was merely awaiting a favorable

1 oppoertunity to commit them, or one or more of them,
2
3 indivi-ually or all, then you may find that the Government
4 did no more than furnish a convenient opening for the
5 criminal activity in which the defendant was prepared to
6 engage.

7 In such circumstances you may find that the
8 Government's agent has not seduced an innocent person, but
9 has only provided the means for the defendant to effectuate
10 or realize his own then existing purpose. In other words,
11 the defendant was then predisposed to commit the offense.

12 On the other hand, if the evidence should leave
13 you with a reasonable doubt as to whether the defendant would
14 have committed the offense as charged without the Govern-
15 ment's inducement, then you shoud find the defendant not
16 guilty.

17 Does that answer the request?

18 We will gather together the transcripts that
19 you have requested and we will send them in to you. If
20 they fully comply, then you won't send us a note. If they
21 do fully comply with your request, then you may send us
22 an additional note.

23 You may retire.

24 (Jury left the courtroom.)

25 THE COURT: Will you gentlemen get together

on that?

MR. TENDY: Yes.

(Pause.)

THE COURT: Are you agreed on it, gentlemen?

MR. SIEGEL: Yes.

MR. GALLINA: Yes.

THE COURT: We will send it in with the marshal.

(Recess.)

(In open court; jury absent.)

MR. SIEGEL: Your Honor, this is my request.

The jury did ask for transcripts of conversations between Rodriguez and Martinez and it just occurred to me, and I think it is important, there is a conversation between Rodriguez and Martinez when Wahid is present, if your Honor will recall, and that occurs during the September 30th meeting, and I think the jury should have that. Either just send it in with the place marked of the exhibit that is in evidence, which would be my suggestion --

THE COURT: WAS it read to the jury?

MR. SIEGEL: It was read to the jury.

MR. GALLINA: May I point out something. I think that the note uses the terminology --

THE COURT: It says conversations between Rodriguez and Martinez that were read to us. That is what

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2 it says.

3 ME. GALLINA: Your Honor, I don't believe
4 this was read, first of all. That part was not read.

5 Second of all -- I am fairly certain it wasn't.

6 Second of all, this is not a conversation
7 between Rodriguez and Martinez. It is a conversation
8 between a person who is on the telephone whose conversation
9 is not recorded. In other words, there is a bug in the
10 room and it is recording what one person on one end of the
11 telephone is saying and what the other person --

12 THE COURT: May I see it, please?

13 MR. GALLINA: It is only a small part of this
14 total conversation going on in the room and it is not what
15 they asked for.

16 THE COURT: Have you got your copy there?

17 MR. SIEGEL: Yes. It is the third tab. It was
18 definitely read.

19 THE COURT: The third tab was read.

20 MR. SIEGEL: The evidence is rebutted.

21 MR. GALLINA: There is no conversation there
22 concerning Mr. Martinez.

23 THE COURT: Let me see it. It is easier.

24 MR. GALLINA: These were the Spanish transcripts
25 that I objected to and were not read to the jury. Every-

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2 thing that was in Spanish I objected to and was not read
3 to the jury.

4 THE COURT: What exhibit is this?

5 MR. SIEGEL: Exhibit 21A, your Honor. Your
6 Honor, you will recall -- I can remember specifically now.
7 At the time I introduced that exhibit, I was surprised
8 Mr. Gallina did object because there were parts in
9 Spanish and I asked whether that was correct and you
10 indicated to me yes, he has no objection, and it came in.
11 That is the reason why I am certain that one in particular
12 was put in evidence and was read.

13 MR. GALLINA: Let's presume, your Honor,
14 which I don't grant, but just for argument's sake. That
15 is not a conversation between Tony or Mr. Martinez and the
16 individual. It is only half of a statement. It is
17 a statement of the officer only. It is not a conversation.
18 It is not the word "conversation". We have to get past
19 that first.

20 THE COURT: Where is Tony in this?

21 MR. GALLINA: He is not in it.

22 THE COURT: He is in the second page, "Hello,
23 Tony".

24 MR. SIEGEL: That is correct. Detective
25 Rodriguez testified his conversation is not recorded because

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Wahid is in the room so what you hear is Detective

3

Rodriguez speaking to Tony. It is very clear

4

he is speaking to Tony and he so testified in addition to

5

the transcript.

6

THE COURT: How far does this go?

7

MR. SIEGEL: The bottom half I showed your

8

Honor, and the top half of the next page.

9

Since the entire document is in evidence, I

10

see no reason to separate it and send it in. We can put

11

markers on it and indicate it to the jury.

12

THE COURT: Would you call the jury back in.

13

(Jury present.)

14

THE COURT: You did ask for this, but it is

15

combined in a big exhibit which is 21A, and it is a tele-

16

phone call between Rodriguez and the defendant on September

17

30, 1976, and i will read it to you rather than you take

18

this whole document back there.

19

The phone rings: "Rodriguez: Excuse me,

20

please. "Wahid: Would you.

21

"Rodriguez on the phone: Hello. Hey Tony.

22

"(Laughs)

23

"Wahid: That's Tony? Beautiful, beautiful,

24

beautiful.

25

"Rodriguez: Yes, Tony, Coci is here Yes,

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tell me -- do you want to talk to him -- to leave it for

3

Monday -- no, they don't know. Yes, he told me that

4

tomorrow in the morning, at 9:00 o'clock, you will call me.

5

I've already spoken to him, you talk to my partner Ricardo

6

right now, okay? Now then, tomorrow morning at nine

7

o'clock sharp you are supposed to call me afterwards, I

8

call Vicki and Vicki calls him -- to notify Vicki so that

9

Vicki notifies him because she knows how to get in touch

10

with him, to let him know that everything is cool, you

11

understand? Wait, speak to him then. (To Wahid) For

12

you, excuse me one second.

13

"Wahid: Uh huh -- uh huh -- uh huh --

14

that's it, okay. (In Spanish) Adios.

15

"Rodriguez: on the phone: A ha, tell me.

16

"Wahid: I call her.

17

"Rodriguez: A ha, yes tomorrow at nine

18

o'clock you call me and I will call Vicki he will call,

19

she will call you.

20

"Ricardo: No Tony, Tony no call. Rodriguez

21

on the phone: How? He is going to call me and then I will

22

call you. A ha -- oh, after you have called me, then he

23

will call me. perfect, perfect, okay, beautiful brother,

24

okay.

25

"Ricardo: Tony call him. Rodriguez on the phone.

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2 Until tomorrow, good night same to you."

3 Is that the telepphe conversation on September
4 30th?

5 Sorry to call you back, but we couldn't have
6 broken it down and sent it in to you.

7 You may retire.

8 (Jury left the courtroom.)

9 MR. SIEGEL: Thank you, your Honor.

10 (Recess.)

11 (At 5:20 P.M. a note was received from the
12 jury and marked Court Exhibit 3.

13 (Court Exhibit 3 marked.)

14 (In open court; jury absent.)

15 THE COURT: Gentlemen, the note reads as follows:

16 "Dear your Honor: The total opinion of the jury is
17 that we are all mentally exhausted and feel we are unable
18 to come to a decision this evening and would prefer to
19 deliberate with clear minds after a good night's sleep.
20 Thank you. Ann Kaplan, Chair Person".

21 I will let the jury go home now.

22 Bring in the jury.

23 (Jury present.)

24 THE COURT: I received your note which I have
25

xxx

2 read into the record, and I won't repeat it. It is an
3 entirely reasonable request. I know you are not going to
4 sleep from 5:30 until 9:00 o'clock in the morning.

5 What time can you get here?

6 THE FORELADY: 9:30 in the morning.

7 THE COURT: I know you will be anxious to get
8 to your task in the morning.

9 Let me again warn you, the matter has been sub-
10 mitted to you now and you have had some deliberations. Be
11 especially cautious about not talking with anybody else
12 about the case when you get home, don't do that. It is not
13 right. You have heard it all, you have heard me explain
14 the law, and it has to be collective judgment of all of
15 your. An individual judgment on the verdict, but the
16 collective judgment of all of you. Don't talk to anybody,
17 don't discuss it with anybody. When you come in in the
18 morning, go right into the jury room. Don't start de-
19 liberating until all twelve of you are there.

20 Have a pleasant evening and we will see you
21 in the morning.

22 (Jury left the courtroom.)

23 THE COURT: Be here no later than 9:30 in the
24 morning, gentlemen.

25 (Adjourned to December 22, 1976, at 9:30 A.M.)

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United States of America

vs.

76 Cr. 965

Joseph Anthony Martinez

New York, New York.
December 22, 1976 - 9:30 A.M.

(At 9:45 A.M. the jury continued its deliberations.)

(At 10:15 A.M., a note was received from the jury and marked Court Exhibit 4.

(Court Exhibit 4 marked.)

(In open court; jury absent.)

THE COURT: I have a note from the jury. They want the ID cards of Yolanda Sarmiento."2 ID cards of Philip and Wahid.

The note further says, "The Rodriguez testimony on installation of wiretaps. Where? Testimony regarding why one conversation was not taped when Wahid was in Ramada Hotel."

MR. SIEGEL: That occurs at the beginning of cross-examination.

I think the Court ought to make clear to the jury, that the conversation isn't recorded because Wahid is present in the room --

1
2 MR. TENDY: And he would have seen the
3 recording device.

4 THE COURT: Right.

5 MR. SIEGEL: All I wish to indicate is that
6 half of that conversation is recorded and they have been
7 given it and you might explain it to them.

8 MR. GALLINA: I object. That is not what they
9 asked for. They asked for the testimony.

10 THE COURT: Would you locate it, please.

11 (Pause.)

12 MR. SIEGEL: Would you read that note again?

13 THE COURT: Rodriguez' testimony regarding why
14 one conversation was not taped when Wahid was at Ramada
15 Hotel".

16 (Recess.)

17 THE COURT: Have you found it?

18 Bring in the jury.

19 (Jury present.)

20 THE COURT: Good morning. I hope you are all
21 refreshed and had a good night's sleep.

22 I have your note here which reads as follows:
23 "Two ID cards of Yolanda Sarmiento. ID cards of Philip
24 and Wahid."

25 They are right here and the marshal will hand

1 them to you as you go into the jury room.

2 Next, "The Rodriguez testimony on installation
3 of wiretaps. Where?"

4 With respect to these two subsequent questions
5 you have asked me, I will ask the reporter to read to you
6 what we believe is what you wanted. I will ask you at
7 the conclusion of that if that is what you wanted and if
8 there is anything additional, you will either raise your
9 hand or nod affirmative or whatever the case may be.
10

11 "The Rodriguez testimony on installation of the
12 wiretaps. Where?"

13 (Record read to the jury.)

14 THE COURT: Is that what you wanted with
15 response to Number 1?

16 All right. Read the second one.

17 (Testimony read to the jury.)

18 THE COURT: Does that respond to the note you
19 have given? Anybody feel it has not?

20 You may retire and take those exhibits.

21 (Jury left the courtroom.)

22 MR. SIEGEL: Your Honor, my concern is, it
23 sounds like there are two calls that are not recorded.

24 THE COURT: I don't think so.

25 MR. SIEGEL: The "that" that the last call

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referred to is referring to a second call.

3

THE COURT: I don't think so.

4

Gentlemen, we have some other business to

5

transact here.

6

(Recess.)

D

REQUEST NO. 2

If you should find, beyond a reasonable doubt, that there came a time when Joseph Martinez knowingly and willfully engaged in the criminal conduct charged in the indictment, you must consider two further questions before you can convict Mr. Martinez of either or both of the charges of the indictment.

The first issue relates to a legal concept called "entrapment".

Where a person has no previous intent or purpose to violate the law, but is induced or persuaded by law enforcement officers or by agents of law enforcement officers to commit a crime, then he is a victim of entrapment, and the law, as a matter of policy, forbids his conviction in such a case.

It is not the purpose of the law to trick or seduce people to commit crimes which they would otherwise not have committed. Such conduct on the part of law enforcement officers is unfair to the individual, burdensome to the administration of justice, and wasteful of public resources.

On the other hand, where a person already has the readiness and willingness to commit the crimes charged by the indictment, there mere fact that the government agent provides what appears to be a favorable opportunity, is not entrapment. For example, when the government suspects that a person is engaged in the sale of stolen property, it is not entrapment for a government agent to pretend to be someone else and to offer to purchase such stolen property from the suspected person.

If, then, you should find beyond a reasonable doubt from the evidence in the case that, before anything at all occurred respecting the crimes charged in the indictment, Mr. Martinez was ready and willing to commit such a crime, whenever opportunity was afforded, and at the government officers or their agents did no more than offer the opportunity, then you should find that Martinez is not a victim of entrapment.

On the other hand, if the evidence in the case leaves you with a reasonable doubt whether Mr. Martinez had the previous intent to commit an offense of the character charged, apart from the inducement or persuasion of some officer or agent of the government, then it is your sworn duty to find him not guilty.

In this connection, I charge you that Sarmiento was an agent, i. e. was cooperating with the government since June 1966, and you must determine whether her statements or conduct entrapped the defendant Martinez.

Secondly:

If you found the activity of the government and its agents in the course of planning and carrying out of the phony escape of Sarmiento constituted an intolerable degree of government participation in the criminal enterprise which is so outrageous as to absolutely bar the government from involving judicial processes to obtain a conviction, then it is your duty to acquit the defendant. *

*

* This charge, which we request in addition to the entrapment

charge, can best be characterized as the "outrageous conduct" charge.

It is adapted from the charge given to the jury in United States v. Buckalew,

(D.C., N.J.; Crim No. 602-71), and is set forth in Devitt and Blackmar,

1975 Pocket Part, § 13.13, at p. 211.

Substantial support for this charge, particularly within the context of the present case, is provided by United States v. Russell, 411 U.S. 423,

431-32 (1973) (opinion by Mr. Justice Rehnquist):

"While we may some day be presented with a situation in which the conduct of law enforcement agents is so outrageous that due process principles would absolutely bar the government from invoking judicial processes to obtain a conviction, Cf. Rochin v. California, 342 U.S. 165 (1952).

See also U.S. v. Archer, 486 F.2d 670 (1973)

1
2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF NEW YORK

4 -----X
5 UNITED STATES OF AMERICA, :

6 -against- :

7 YOLANDA SARMIENTO, aka "CHOLA" :

8 Defendant. :

74-CR-492

9 -----X
10
11 United States Courthouse
12 Brooklyn, New York

13 January 21, 1977
14 10:00 o'clock A.M.

15 B e f o r e :

16
17 HONORABLE HENRY BRAMWELL, U.S.D.J.
18
19
20
21
22
23

24 CHERYL FREY
25 ACTING OFFICIAL COURT REPORTER

Appearances:

DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: DAVID DE PETRIS, ESQ.
Assistant U.S. Attorney

HOWARD L. JACOBS, ESQ.
Attorney for the Defendant.

1 (The interpreter, Libya Clancy, is sworn in by
2 the Clerk of the Court.)

3 THE COURT: Mr. Jacobs, is there any legal
4 reason why the defendant should not be sentenced at
5 this time?

6 MR. JACOBS: No, your Honor.

7 THE COURT: Is there any reason you should not
8 be sentenced today Ms. Sarmiento?

9 THE DEFENDANT: No, your Honor.

10 THE COURT: I will hear Mr. Jacobs.

11 MR. JACOBS: I hope your Honor has received
12 the letter that I wrote to your Honor.

13 THE COURT: Yes I did and I have read it. If
14 you wish to elaborate on any portions of it, you may.

15 MR. JACOBS: Yes, your Honor. I also requested
16 and I don't know if he had that one, the letter with
17 regard to --

18 THE COURT: I did not get a letter that I
19 remember seeing. I don't think I got the letter.

20 MR. JACOBS: I spoke to Mr. Tenure(ph), the
21 assistant attorney of the Southern District of New
22 York who told me that if your Honor wishes, he would
23 be glad to come here, if your Honor has any question
24 with regard to Ms. Sarmiento's cooperation. I believe
25 it is set forth in detail in the pre-sentence report

1 and I will elaborate on it myself.

2 Ms. Sarmiento is 47 years old your Honor. This,
3 of course, is a troublesome situation. There is
4 little doubt that Ms. Sarmiento in 1969 and 1970 took
5 part in the importation and distribution of large
6 quantities of cocaine into the United States. She was
7 arrested in 1970 and after making bail, jumped bail
8 for the State of New York and returned to Argentina.
9 Ms. Sarmiento, she had some cocaine remaining in
10 Argentina. She sold that and that is the last narcotic
11 transaction she has ever or any other illegal activity
12 she ever partook in.

13 The Government has information from somebody
14 else apparently, that Ms. Sarmiento's activities
15 continued into 1971. She has vehemently denied this.
16 She has offered to take a lie detector test with
17 regard to this fact and candidly your Honor, in light
18 of the fact that she has cooperated with the Government
19 fully, I feel there was really no reason for her to lie
20 about any activities that might have taken place in
21 1971.

22 In fact, your Honor, there was a very good
23 reason why, if she had participated in 1971, she
24 should have told the Government about it. But one of
25 the problems that Ms. Sarmiento has faced, that in her

1 cooperation, that all the activities or most of them
2 that she has talked about are beyond the period of
3 the Statute of Limitation relating to other people.
4 If Ms. Sarmiento wanted to build a better situation
5 for herself and testify in Court, she would have
6 elaborated as to activities beyond 1971. She swears
7 that she did not and she went into business in
8 Argentina in 1971 and has continued in that business
9 right into May of last year when she was taken from
10 Argentina and brought back here.

11 Now, Ms. Sarmiento, when she came back here,
12 almost immediately expressed her desire to cooperate
13 with the Government. She was fully apprised by agents
14 of the Drug Enforcement Administration and assistance
15 in this office with regard to her activities in
16 narcotics. Furthermore, last year while incarcerated
17 in the Metropolitan Correction Center, she was
18 approached by another inmate guard there offering to
19 get her out to let her escape and she had the oppor-
20 tunity, your Honor, of escaping from the Metropolitan
21 Correctional Center. Rather than that, she came to me
22 and told me about it and I brought the information to
23 the United States Attorney's office. Ms. Sarmiento
24 agreed, even though a great danger to herself and her
25 family, to cooperate. She cooperated fully and by that

1 I mean the activities went on for quite some period
2 of time. Six people were arrested including two
3 guards and an inmate, five of them pleaded guilty. The
4 six inmates went to trial and Ms. Sarmiento testified
5 at that trial and he was convicted.

6 Now beyond that, Ms. Sarmiento has had far
7 great problems. She had three sons. She now has two
8 and a great tragedy. About a year and a half ago one
9 of her sons was 17 years old was kidnapped in Argentina
10 and killed, murdered brutally. I have furnished to the
11 Probation Department the full details of that incident
12 and hope that they have made it known to your Honor.

13 Furthermore, Ms. Sarmiento is in very bad
14 health. She was in the hospital just yesterday. She
15 has heart problems, diabetes, anemia. She is informed
16 that she will have to have a biopsy to determine
17 whether a certain tumor that she has is malignant.
18 She has been kept since her escape attempt in a state
19 institution under very very uncomfortable conditions
20 compared to the Federal prison.

21 I would remind your Honor that two of the
22 defendants were involved in these activities who
23 cooperated with the Government, pleaded guilty to
24 reduce the charges and received sentences to three
25 years in prison.

1 Furthermore, very recently your Honor sentenced
2 Mr. Orsini (ph). To my knowledge he never cooperated
3 with the Government and was a very substantial figure
4 in the conspiracy, to a period of ten years in prison.
5 I point those out to try to attempt to see where
6 Ms. Sarmiento fits in.

7 The Government has seen fit to request that she
8 plead guilty to a charge that carries a mandatory
9 minimum sentence of five years. She has not only put
10 herself in great danger, she has put her family in
11 great danger. The escape was well publicized in
12 Argentina and Chile where her family still resides.

13 In light of all of this, your Honor, I would
14 hope that your Honor would consider sentencing
15 Ms. Sarmiento to the mandatory minimum sentence of
16 five years bearing in mind that she has already been
17 in a jail type of institution for eight months now.
18 Thank you very much.

19 THE COURT: Thank you, Mr. Jacobs. Ms. Sarmiento,
20 what would you like to say to the Court?

21 THE DEFENDANT: What Mr. Jacobs has told you
22 is the truth. In 1970 I started living decently. I
23 ask forgiveness for what I did. And I swear I would
24 never become involved again in illegal activities.
25 The only thing I want is to be back with my son, my

1 youngest son who is 12 years old who needs me.

2 MR. DE PETRIS: Before the Court imposes
3 sentence, I just wanted to reiterate what Mr. Jacobs
4 said concerning Ms. Sarmiento's cooperation. She did,
5 upon being approached by an inmate and guard in the
6 Metropolitan Correctional Center in New York, being
7 approached concerning an escape for a fee, advised
8 myself of the proposed plan and subsequently she began
9 cooperating with Mr. Hennedy (ph) the assistant
10 attorney in the Southern District of New York and
11 followed through with the escape plan working with
12 the Government. And when the escape occurred and
13 the individuals were arrested, she fully cooperated
14 with the Southern District in that matter. When it
15 became necessary she testified at a trial at one of
16 those individuals.

17 In addition, Ms. Sarmiento provided this office
18 with information concerning the various individuals
19 with whom she was involved in the trafficking of
20 cocaine and heroin during 1969 and 1970. While there
21 is a question as to whether or not Ms. Sarmiento was
22 involved in narcotic activities in 1971, I don't
23 believe that that really should be one of the issues
24 which your Honor should consider in sentencing this
25 defendant.

1 I think in addition, I should point out that
2 Ms. Sarmiento has provided information to the
3 Government concerning the whereabouts of certain
4 fugitives from the United States on narcotic charges.

5 In addition, she has provided information to
6 our office concerning certain other illegal activities
7 of terrorist groups. That is all I have to say to your
8 Honor.

9 THE COURT: Thank you, Mr. De Petris for your
10 statements as to the defendant's cooperation.

11 MR. DE PETRIS: I might further add, your Honor,
12 that at the time of the plea there were certain possible
13 conditions concerning which a change of plea might be
14 entertained by the Government. They concerned a
15 recommendation from the Southern District of New York
16 concerning future cooperation. I might just state for
17 the record that no such recommendation was received by
18 this office from the Southern District. So those
19 conditions have not come into play. So this defendant
20 is facing between five and twenty years.

21 THE COURT: Yes, Mr. Jacobs?

22 MR. JACOBS: Just to clarify that a little. It
23 was the position of the Southern District of New York
24 that they would not make such a recommendation unless
25 Ms. Sarmiento cooperated with regard to the escape

1 which she did and assisted with regard to a second
2 activity, which because of matters outside her control,
3 never bore any fruition. It was actually the attempt
4 to locate and return to the United States another
5 fugitive, but that was unsuccessful. She attempted to
6 and because of that they felt they were not obliged to
7 make the recommendation to the Eastern District of
8 New York, and did not.

9 MR. DE PETRIS: I did not mean to indicate that
10 Ms. Sarmiento did not attempt to do whatever she was
11 asked to do. All I was indicating was just for the
12 record, since there was certain conditions that were
13 related to the Court in connection with the plea at
14 the time of the plea, I thought I should indicate that
15 those conditions had not been met.

16 THE COURT: Thank you. Is there anything
17 further, Mr. Jacobs?

18 MR. JACOBS: No, your Honor.

19 THE COURT: The Court has taken into considera-
20 tion the fact that this defendant pleaded guilty. The
21 Court has also taken into consideration the fact that
22 this defendant has given the Government complete and
23 thorough cooperation and participated in a controlled
24 escape from the Metropolitan Correctional Center in
25 New York City which resulted in the arrest of six

1 individuals, five have been convicted and one is
2 awaiting trial. Two of these individuals were
3 correction officers from the Metropolitan Correctional
4 Center. The defendant in this situation participated
5 in the scheme and cooperated with Government authori-
6 ties under the risk of potential personal harm. The
7 defendant has several prior arrests, mostly for shop-
8 lifting.

9 It is adjudged the defendant is hereby committed
10 to the custody of the Attorney General or his authorized
11 representation for imprisonment for a term of five
12 years.

13 THE DEFENDANT: Thank you sir. God bless you.

14 MR. JACOBS: There is one thing further. I have
15 considered asking your Honor with regard to the possi-
16 bility of sentencing her under 420 --

17 THE COURT: 4205(b)(2).

18 MR. JACOBS: I have thought that that might not
19 benefit her. I withhold that your Honor and in the
20 next few months I might decide to ask your Honor to
21 modify the sentence.

22 THE COURT: Make an application.

23 MR. DE PETRIS: At this time the Government
24 moves to dismiss 72CR160 as against defendant Yolanda
25 Sarmiento.

1 THE COURT: As against this defendant the
2 application is granted.

3 MR. DE PETRIS: In addition, the Government
4 moves to dismiss 74-CR-492.

5 THE COURT: The application is granted.

6 MR. DE PETRIS: In addition, the Government
7 moves to dismiss 71-CR-11 as against the defendant
8 Yolanda Sarmiento.

9 THE COURT: That application is granted.

10 THE DEFENDANT: God bless you, your Honor.

11
12 * *

DEFENDANT'S

A

Dismissed

To be dismissed

EXHIBIT

U.S. DIST. COURT

S. D. OF N. Y. *ed*

DISTRICT COURT
OF NEW YORK

F

UNITED STATES OF AMERICA

- against -

ANDRE GALTAN CONDOMINE, a/k/a "Raymond"
JOANNES DELCZ, a/k/a "Mimi"
LOUIS REVIERE, a/k/a "Petit Louis"
JOSEF VIERNE
YOLANDA SARMIENTO
JORGE VARELA FERNANDEZ
JUAN CARLOS FRANCO, a/k/a "Miguel"
ROBERTO CRISTOLAL
ALFREDO AVELES
ELSA YASBIC, a/k/a "La Turca"
JOHN DOE, a/k/a "Guigui" and
JOHN DOE, a/k/a "Carola",

Defendants.

Cr. No.

72 G. 1260

(21 U. S. C. §173
21 U. S. C. §174
21 U. S. C. §856
21 U. S. C. §963
21 U. S. C. §952(a)
21 U. S. C. §960(a)(1)
18 U. S. C. §2)

THE GRAND JURY CHARGES:

COUNT ONE

From on or about the 1st day of August 1970, and continuously thereafter up to and including the date of the filing of this indictment, within the Eastern District of New York, and elsewhere, the defendants ANDRE GAETAN CONDEMIN, a/k/a "Raymond", JOANPES MUÑOZ, a/k/a "Mimi", LOUIS RIVIERE, a/k/a "Petit Louis", JOZEF VIEHNE, YOLANDA SARMIENTO, JORGE VARELA FERNANDEZ, JUAN CARLOS FRANCO, a/k/a "Miguel", ROBERTO CRISTOBAL, ALFREDO AVILA, ELSA YASBIC, a/k/a "La Turca", JOHN DOE, a/k/a "Guigui" and JOHN DOE, a/k/a "Garcia", together with Alfredo Mazza, Rodolfo Alberto Ruiz, Eduardo Arroyo, Rachid Gharbi, Pedro Caballero Linares and Carlos Mazza, named herein as co-conspirators but not as defendants, and others known and unknown to the Grand Jury, unlawfully, willfully and knowingly did combine, conspire, confederate and agree

together and with each other to violate prior to May 1, 1971 Sections 173 and 174 of Title 21, United States Code, and on and after May 1, 1971 to violate Sections 812, 841(a)(1), 841(b)(1)(A) 952(a), 960(a)(1) and 960(b)(1) of Title 21, United States Code.

1. It was part of said conspiracy that prior to May 1, 1971 the defendants fraudulently and knowingly would import and bring into the United States large amounts of heroin and cocaine, narcotic drugs, contrary to law.

2. It was further a part of said conspiracy that prior to May 1, 1971 the defendants unlawfully, wilfully and knowingly would receive, conceal, sell and facilitate the transportation, concealment and sale of large amounts of heroin and cocaine, narcotic drugs, after the narcotic drugs had been imported and brought into the United States, knowing the same to have been imported and brought into the United States contrary to law.

3. It was further a part of said conspiracy that on and after May 1, 1971, the defendants knowingly and intentionally would import large amounts of heroin and cocaine, Schedule I and Schedule II narcotic drug controlled substances, into the United States from places outside thereof.

4. It was further a part of said conspiracy that on and after May 1, 1971, the defendants knowingly and intentionally would distribute and possess with intent to distribute large amounts of heroin and cocaine, Schedule I and Schedule II narcotic drug controlled substances.

5. It was further a part of said conspiracy that the defendants would conceal the existence of the conspiracy and would take steps designed to prevent disclosure of their activities.

In furtherance of the conspiracy and to effect the objects thereof, the following ~~were~~ acts, among others, were committed within the Eastern District of New York and elsewhere:

CONDEMEINE, a/k/a "Raymond", JOHANNES MUÑOZ, a/k/a "Mimi" and LOUIS RIVIERE, a/k/a "Petit Louis".

11. On or about July 24, 1972, co-conspirator Rachid Gharbi arrived at John F. Kennedy International Airport in Queens, New York.

12. On or about September 20, 1972, the defendants and co-conspirators shipped approximately sixty (60) kilograms of heroin aboard the Mormacaltair, a vessel sailing from Buenos Aires, Argentina to New York, New York.

13. On or about October 2, 1972, co-conspirator Rachid Gharbi travelled from ~~the~~ New York to Brussels, Belgium.

(Title 21 United States Code, Sections 173, 174, 846 and 963.)

COUNT TWO

On or about the 26th day of October 1970, at John F. Kennedy International Airport, within the Eastern District of New York, the defendants YOLANDA SARMIENTO and JUAN CARLOS FRANCO, a/k/a "Miguel" fraudulently and knowingly did import and bring into the United States approximately six (6) kilograms of heroin, a narcotic drug, contrary to law. (Title 21 United States Code, Sections 173 and 174; Title 18 United States Code, Section 2.)

COUNT THREE

On or about the 1st day of December 1970, at John F. Kennedy International Airport, within the Eastern District of New York, the defendants YOLANDA SARMIENTO and JUAN CARLOS FRANCO, a/k/a "Miguel" fraudulently and knowingly did import and bring into the United States approximately eight (8) kilograms of heroin, a narcotic drug, contrary to law. (Title 21 United States Code, Sections 173 and 174; Title 18 United States Code, Section 2.)

COUNT FOUR

On or about the 12th day of April 1971, at John F. Kennedy International Airport, within the Eastern District of New York, the defendants ANDRE GAETAN CONDEMIANE, a/k/a "Raymond", JOANNES MUNOZ, a/k/a "Mimi", LOUIS RIVIERE, a/k/a "Petit Louis", YOLANDA SARMIENTO, JORGE VARELA FERNANDEZ and JOHN JOE, a/k/a "Guigui" fraudulently and knowingly did import and bring into the United States approximately ten (10) kilograms of heroin, a narcotic drug, contrary to law. (Title 21 United States Code, Sections 173 and 174; Title 18 United States Code, Section 2.)

COUNT FIVE

On or about the 12th day of April 1971, at John F. Kennedy International Airport, within the Eastern District of New York, the defendant YOLANDA SARMIENTO fraudulently and knowingly did import and bring into the United States approximately three (3) kilograms of cocaine, a narcotic drug, contrary to law. (Title 21 United States Code, Sections 173 and 174; Title 18 United States Code, Section 2.)

COUNT SIX

On or about the 30th day of September 1971, at John F. Kennedy International Airport, within the Eastern District of New York, the defendants ANDRE GAETAN CONDEMINÉ, a/k/a "Raymond", JOANNES MUNOZ, a/k/a "Mimi", LOUIS RIVIERE, a/k/a "Petit Louis", YOLANDA SARMIENTO and JOHN DOE, a/k/a "Guigui" knowingly and intentionally did import approximately eighteen (18) kilograms of heroin, a Schedule I narcotic drug controlled substance, into the United States from Argentina. (Title 21 United States Code, Sections 960(a)(1) and 952(a); Title 18 United States Code, Section 2.)

COUNT SEVEN

On or about the 30th day of September 1971, at John F. Kennedy International Airport, within the Eastern District of New York, the defendant YOLANDA SARMIENTO knowingly and intentionally did import approximately nine (9) kilograms of cocaine, a Schedule II narcotic drug controlled substance, into the United States from Argentina. (Title 21 United States Code, Sections 960(a)(1) and 952(a); Title 18 United States Code, Section 2.)

A TRUE BILL.

FOREMAN

ROBERT A. MORSE
United States Attorney
Eastern District of New York

DEFENDANT'S

B

EXHIBIT
U. S. DIST. COURT
S. D. N. Y.

District Court
of New York

of America

- against -

GUILLERMO ADAME,
LOUIS ADAME,
MERCEDES ADAME,
FREDERICO BECLERRA,
JORGE BONNEMAISON,
MARIA BONNEMAISON,
MARIA DE BONNEMAISON,
JOSE DELLACQUA also known as
Oscar Smith, also known as
"El Gringo", also known as
"El Tio",
- ALBERTO DIAZ,
MARIA ANGELICA DIAZ FEIJOO
also known as Carmen
Rodriguez Diaz, also known
as "Chiche",
DELMA DUARTE,
RENE DUARTE also known as
"El Chico Rene",
MIGUEL GARCIA also known as
"Miguelito", also known as
"Scarface",

Dominique DelSine, aka 'Domigo'

Judge Bromberg

11/4/76

Pleaded Guilty

Cr. No.
(T. 21 U.S.C., §173
T. 21 U.S.C., §174))

74CR 492

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.

JUL 24 1974

TIME AM.....
P.M.....

CARLOS GONZALEZ also known as
Carlos Matadero,
RICARDO KRINKER also known as
"Bebe",
SEGUNDO LOPEZ,
JAIME MORAQUES also known as
Jorge Martinez-Diaz,
RAFAEL ALFREDO MURILLO,
RAMON NOVOA also known as
"Indio Moncho",
DOMINIQUE ORSINI also known as
"Domingo",
VINCENTE OTERO also known as
"Cache",
ORLANDO DA SILVA PINHEIRO
also known as Luis Carlos
de Almedia,
BENJAMIN VARA-PUERTAS also known
as Eusebio Gonzalez Conde,
VICTOR MCNAMARA-RIQUELME also
known as "El Guaso Renca",
LEONARDO ROMERO also known as
"Nate",
VINCENTE SANTOS,
-YOLANDA SARMIENTO also known
as "Chola",
PEDRO ZURDO, and
JOHN DOE also known as
"Angelito",

Defendants.

- - - - - X

THE GRAND JURY CHARGES:

On or about and between the 1st day of January 1968, and the 1st day of April 1971, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, GUILLERMO ADAME, LUIS ADAME, MERCEDES ADAME, FREDERICO BECERRA, JORGE BONNEMAISON, MARIA BONNEMAISON, MARIA DE BONNEMAISON, JOSE DELLACQUA also known as Oscar Smith, also known as "El Gringo", also known as "El Tio", ALBERTO DIAZ, MARIA ANGELICA DIAZ FEIJOO also known as Carmen Rodriguez Diaz, also known as "Chiche", DELMA DUARTE, RENE DUARTE also known as "El Chico Rene", MIGUEL GARCIA also known as "Miguelito", also known as "Scarface", CARLOS GONZALEZ also known as Carlos Matadero, RICARDO KRIMKER also known as "Bebe", SEGUNDO LOPEZ, JAIME MORAQUES also known as Jorge Martinez-Diaz, RAFAEL ALFREDO MURILLO, RAMON NOVOA also known as "Indio Moncho", DOMINIQUE ORSINI also known as "Domingo", VINCENTE OTERO also known as "Cacho", ORLANDO DA SILVA PINHEIRO also known as Luis

Carlos de Almedia, BENJAMIN VARA-PUERTAS also known as Eusebio Gonzalez Conde, VICTOR MCNAMARA-RIQUELME also known as "El Guaso Renca", LEONARDO ROMERO also known as "Nato", VINCENTE SANTOS, YOLANDA SARMIENTO also known as "Chola", PEDRO ZURDO, and JOHN DOE also known as "Angelito", the defendants together with Wladimir Banderas, Luis Serafin Torres-Moreno, Emilio Quintero, Felix Martinez, Ricardo Jastrzebski and Luis Alfredo Ureta Morales, named herein as co-conspirators but not as defendants, and others known and unknown to the Grand Jury, wilfully, knowingly and unlawfully did combine, conspire, confederate and agree together and with each other to violate Sections 173 and 174 of Title 21, United States Code.

1. It was part of said conspiracy that the defendants and co-conspirators fraudulently and knowingly would import and bring into the United States large quantities of heroin and cocaine, narcotic drugs, contrary to law.

2. It was further a part of said conspiracy that the defendants and co-conspirators wilfully, knowingly and unlawfully would receive, conceal, buy, sell and facilitate the transportation, concealment and sale of large quantities of heroin and cocaine, narcotic drugs, after the narcotic drugs had been imported and brought into the United States, knowing the same to have been imported and brought into the United States contrary to law.

3. It was further a part of said conspiracy that the defendants and co-conspirators would conceal the existence of the conspiracy and would take steps designed to prevent disclosure of their activities.

In furtherance of the conspiracy and to effect the objects thereof, the following overt acts, among others, were committed within the Eastern District of New York and elsewhere:

O V E R T A C T S

1. On or about September 19, 1968, defendant MORAQUES carried approximately two (2) kilograms of cocaine from Tijuana, Mexico to San Ysidro, California.
2. In or about July, 1969, in Marseilles, France, defendants VARA PUERTAS and ZURDO delivered seventeen (17) kilograms of heroin to co-conspirator Jastrzebski.
3. On or about July 10, 1969, defendant DELMA DUARTE transported approximately eleven (11) kilograms of heroin from Tijuana, Mexico to San Ysidro, California.
4. In or about July, 1969, in Manhattan, New York, co-conspirator Banderas delivered approximately three (3) kilograms of heroin to defendant GARCIA.
5. In or about August, 1969, in Buenos Aires, Argentina, defendants MURILLO and KRIMKER met with co-conspirator Torres-Moreno.

6. In or about September 1969, co-conspirators Banderas and Torres-Moreno travelled by airplane from John F. Kennedy International Airport, Queens, New York to Paris, France.

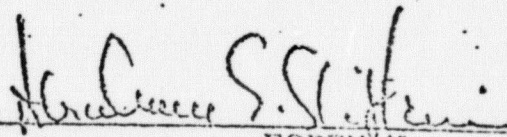
7. In or about September, 1969, in Marseilles, France, defendant ALBERTO DIAZ delivered approximately thirty (30) kilograms of heroin to co-conspirators Banderas and Torres-Moreno in exchange for approximately One Hundred Five Thousand Dollars (\$105,000.00).

8. On or about May 11, 1970, defendant DELLACQUA met with co-conspirator Banderas and others at 310 E. 55th Street, Manhattan, New York.

9. In or about September, 1970, in Montevideo, Uruguay, defendant MURILLO introduced defendant OTERO to co-conspirators Torres-Moreno and Banderas.

10. In or about October, 1970, in Martinez, Argentina, defendants MURILLO, KRIMKER and ORSINI met with co-conspirator Banderas. (Title 21, United States Code, Sections 173 and 174).

A TRUE BILL.


FOREMAN.


UNITED STATES ATTORNEY

DEFENDANT'S

EXHIBIT

U. S. DIST. COURT,
S. D. N. Y. *ed*

murder
DISTRICT COURT
OF NEW YORK

----- X
OF AMERICA

-against-

SERCIO LAZO,
YOLANDA SARMIENTO,
- EMILIO DIAZ,
CARLOS MATADERO, also known as "Carlos Gonzalez"
- OSCAR SMITH, also known as "El Gringo Smith"
also known as "Jose Dellacqua"
- MARIA BONNEVAISON,
- JORGE BONNEVAISON,
HORACIO DELLACQUA,
ROBUSTIANO LAZO,
PEDRO LOPEZ, also known as "Pedro Fernandez"
WALTER DIAZ, also known as "Waldo Diaz" and
JESUS JIMINEZ ARRIOLA, also known as "Pepito"

Defendants.

----- X
THE GRAND JURY CHARGES:

74C-493
Cr.No. *74C-493*
(T. 21, U.S.C. 8113, 8114,
and T.18, U.S.C. 52)

BEST COPY AVAILABLE

COUNT ONE

On or about and between the 1st day of December 1968 and the 31st day of December 1969, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, SERGIO LAZO, YOLANDA SARMIENTO, EMILIO DIAZ, CARLOS MATADERO, also known as "Carlos Gonzalez", OSCAR SMITH, also known as "El Gringo Smith", also known as "Jose Dellacqua", MARIA BONNEMAISON, JORGE BONNEMAISON, HORACIO DELLACQUA, ROBUSTIANO LAZO, PEDRO LOPEZ, also known as "Pedro Fernandez", WALTER DIAZ, also known as "Waldo Diaz" and JESUS JIMINEZ ARRIOLA, also known as "Pepito", the defendants, together with Juan Redondo and Arsenio Augusto Araya-Marchio, named herein as co-conspirators but not as defendants, and others known and unknown to the Grand Jury, wilfully, knowingly and unlawfully did combine, conspire, confederate and agree together and with each other to violate Sections 173 and 174 of Title 21, United States Code.

1. It was part of said conspiracy that the defendants and co-conspirators fraudulently and knowingly would import and

bring into the United States large quantities of heroin and cocaine, narcotic drugs, contrary to law.

2. It was further a part of said conspiracy that the defendants and co-conspirators unlawfully, wilfully and knowingly would receive, conceal, buy, sell and facilitate the transportation, concealment and sale of large quantities of heroin and cocaine, narcotic drugs, after the narcotic drugs had been imported and brought into the United States, knowing the same to have been imported and brought into the United States contrary to law.

3. It was further a part of said conspiracy that the defendants and co-conspirators would conceal the existence of the conspiracy and would take steps designed to prevent disclosure of their activities.

In furtherance of the conspiracy and to effect the objects thereof, the following overt acts were committed within the Eastern District of New York and elsewhere:

O V E R T A C T S

1. In or about December 1968 the defendant SERGIO LAZO met with the co-conspirator Redondo in Santiago, Chile.

2. In or about January 1969 the defendant SERGIO LAZO received approximately six (6) kilograms of cocaine from the defendant SMITH in Santiago, Chile.

3. In or about January 1969 the defendant SMITH met with the defendant MATADERO, in Antofagasta, Chile.

4. In or about January 1969 the defendant MARIA BONNEMAISON, transported wine jugs containing cocaine, from Santiago, Chile to Queens, New York.

5. In or about February 1969 the defendants SERGIO LAZO and ROBUSTIANO LAZO secreted cocaine in wine jugs in Santiago, Chile.

6. In or about February 1969 the defendant JORGE BONNEMAISON, transported wine jugs containing cocaine, from Santiago, Chile to Queens, New York.

7. In or about March 2, 1969 the defendant HORACIO DELLACQUA, transported wine jugs containing cocaine, from Santiago, Chile to Queens, New York.

8. On or about June 22, 1969, the defendant SERGIO LAZO and the co-conspirator Redondo met in New York, New York.

9. In or about July 1969 the defendants LAZO, SARMIENTO, EMILIO DIAZ and the co-conspirator Redondo met in Brooklyn, New York.

10. In or about early November 1969 the defendant SERGIO LAZO travelled with co-conspirator Araya-Murchio from Queens, New York to Santiago, Chile.

11. On or about November 12, 1969, the defendant LOPEZ met co-conspirator Araya-Murchio in Buenos Aires, Argentina.

12. On or about November 13, 1969, the defendants EMILIO DIAZ and ARRIOLA met co-conspirator Murchio in Queens, New York.

13. On or about December 8, 1969 co-conspirator Araya-Murchio, transported a wine jug containing heroin from Buenos Aires, Argentina to Queens, New York. (Title 21, United States Code, Sections 173 and 174).

COUNT TWO

On or about the 8th day of December 1969, in the Eastern District of New York, the defendants SERGIO LAZO, YOLANDA SARMIENTO, EMILIO DIAZ, CARLOS MATADERO, also known as "Carlos Gonzalez", OSCAR SMITH, also known as "El Gringó Smith", also known as "Jose Dellacqua", MARIA BONNEMAISON, JORGE BONNEMAISON, HORACIO DELLACQUA, ROBUSTIANO LAZO, PEDRO LOPEZ, also known as "Pedro Fernandez", WALTER DIAZ, also known as "Waldo Diaz" and JESUS JIMINEZ ARRIOLA, also known as "Pepito" fraudulently and knowingly did import and bring into the United States approximately six (6) kilograms of heroin, a narcotic drug, contrary to law. (Title 12, United States Code, Sections 173 and 174 and Title 18, United States Code, Section 2).

A TRUE BILL

FOREMAN

DAVID G. TRACER
United States Attorney
Eastern District of New York

DEFENDANT'S

D

EXHIBIT
U. S. DIST. COURT.
S. D. OF N. Y.

DISTRICT COURT
E. OF NEW YORK

AMERICA

/s/ a El Gallego,
CO. a/k/a Miguel Aspilche,
ANTHONY TORRES, a/k/a Tony T,
REMIATO REVERA,
VLADIMIR MADRERA,
VOLANDA CARMENITO, a/k/a Chola ✓
EMILIO DIAZ-CONZALEZ ✓
NELSON GARCIA, a/k/a Cabilla,
RALPH MADONNA,
MIGUEL GARCIA,
OLIVARES, a/k/a El Filado Oil,
ATELIO LOCA,
COCO SALCADO,
ALBERTO NAVARRO-DIAZ.

Defendants.

(2)

OVERLAPS

EX 72 Cr. 1260

TO BE DISMISSED

INDICTMENT

S. 74 Cr. 472
(RT)

BEST COPY AVAILABLE

CRIME

The Grand Jury charges:

1. From on or about the 1st day of July, 1970, and continuously thereafter up to and including the date of the filing of this Indictment, in the Southern District of New York and elsewhere, ENRIQUE LOPEZ, a/k/a El Gallego, JUAN CARLOS FRANCO, a/k/a Miguel Aspilche, ANTHONY TORRES, a/k/a Tony T, ROBERTO RIVERA, WLADIMIR BANDERA, YOLANDA SARRIENTO, a/k/a Chola, EMILIO DIAZ-GONZALEZ, NELSON GARCIA, a/k/a Cabilla, RALPH MADONNA, MIGUEL GARCIA, OLIVARES, a/k/a El Pilado Gil, ATILIO DOCA, COCO SALGADO, ALBERTO NAVARRO-DIAZ, the defendants, and Alfredo Masza, Lorenzo Camelo, Alfredo Avila, Jorge Varela-Perez, Roberto Cristobal, Elsa Yastic, a/k/a Litorea, and Rodolfo Ruiz, a/k/a The Painter, named as co-conspirators, and others to the Grand Jury known and unknown, unlawfully, intentionally and knowingly combined, conspired, confederated and agreed together and with each other to violate Sections 173, 174, 812, 841(a)(1), 841(b)(1)(A), 912(a), 960(a)(1) and 960(b)(1) of Title 21, United States Code.

2. It was part of said conspiracy that before May 1, 1971, the said defendants, unlawfully, wilfully, knowingly, and fraudulently would import and bring into the United States large amounts of heroin and cocaine, narcotic drugs, from places outside thereof, to wit, Chile and Argentina, and elsewhere to the Grand Jury known and unknown, in violation of Sections 173 and 174 of Title 21, United States Code.

3. It was further part of said conspiracy that before May 1, 1971, the said defendants unlawfully, wilfully, and knowingly would conceal, buy, sell, and facilitate the transportation, movement and sale of a large quantity of heroin and cocaine, narcotic drugs, the exact amount and nature thereof being to the Grand Jury unknown, after the said narcotic drugs had been imported and brought into the United States contrary to law, knowing that the said narcotic drugs had been imported and brought into the United States contrary to law in violation of Sections 173 and 174 of Title 21, United States Code.

4. It was further part of said conspiracy that on and after May 1, 1971, the said defendants and co-conspirators unlawfully, intentionally and knowingly would import into the United States from places outside of the United States, to wit, Chile and Argentina, and elsewhere to the Grand Jury known and unknown, large quantities of heroin and cocaine, Schedules I and II narcotic drug controlled substances, the exact amount thereof being unknown, in violation of Sections 812, 952(a), 960(a)(1) and 960(b)(1) of Title 21, United States Code.

5. It was further part of said conspiracy that on and after May 1, 1971, the said defendants and co-conspirators unlawfully, intentionally and knowingly would distribute and possess with intent to distribute large quantities of heroin and cocaine, Schedule I and II narcotic drug controlled

substances, the exact amount thereof being to the Grand Jury unknown, in violation of Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

6. Among the means by which the defendants carried out this conspiracy were the following:

(a) YOLANDA SANTIAGO, a/k/a Chela, WLADIMIR BANDERA, JUAN CARLOS PRADO, a/k/a Miguel Aspilche, Alfredo Ariza and Rodolfo Ruiz, a/k/a The Painter, obtained approximately 1/6th of a ton of heroin and cocaine in Argentina and Chile which they smuggled in seven separate air freight shipments into the United States secreted in antique picture frames.

(b) HENRIQUE LOPEZ, a/k/a El Callejo, assisted in arranging for buyers for the heroin and cocaine in New York City and demanded in return a commission of approximately five hundred dollars per kilogram.

(c) ANTHONY TORRES, a/k/a Tony T, ROBERTO RIVERA, and Lorenzo Cancio and others purchased the heroin and cocaine in New York City for more than one million dollars.

(d) NELSON GARCIA, a/k/a Cabilla, RALPH MADONNA and MIGUEL GARCIA purchased the heroin and cocaine on its resale in New York City.

OVERT ACTS

In pursuance of this conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York and elsewhere:

(1) In or about October and December, 1970, defendant JUAN CARLOS FRANCO, a/k/a Manuel Aspilche, and co-conspirators Alfredo Manna and Rodolfo Ruiz, a/k/a The Painter, air freighted fourteen kilograms of heroin, which they had received from defendant VOLUNTAD CARMENITO, a/k/a Chela, from Buenos Aires, Argentina, to New York, New York, secreted in antique picture frames.

(2) In or about January, 1971, defendant JUAN CARLOS FRANCO, a/k/a Miguel Aspilche, and co-conspirator Rodolfo Ruiz, a/k/a The Painter, air freighted approximately twenty kilograms of narcotic drugs secreted in antique picture frames from Buenos Aires, Argentina, to New York, New York.

(3) In or about January, 1971, defendant ANTHONY TORRES, a/k/a Tony T. purchased approximately twenty kilograms of narcotic drugs in New York, New York.

(4) In or about January, 1971, defendant ENRIQUE LOTER, a/k/a El Gallero, introduced defendant JUAN CARLOS FRANCO, a/k/a Miguel Aspilche, to co-conspirator Lorenzo Cancio in New York, New York.

(5) In or about April, 1971, co-conspirator Alfredo Mazza air freighted ten kilograms of heroin and three kilograms of cocaine which cocaine he had obtained from defendant YOLANDA SARMIENTO, a/k/a Chola, from Buenos Aires, Argentina, to New York, New York, secreted in antique picture frames and sold it to co-conspirator Alfredo Aviles.

(6) In or about April, 1971, defendant TOMMAS, a/k/a Tony T, conspired with co-conspirator Mazza for the purchase of ten kilograms of heroin in New York.

(7) In or about April, 1971, defendant TOMMAS, a/k/a Tony T, conspired with co-conspirator Mazza for the purchase of ten kilograms of heroin in New York.

BEST COPY AVAILABLE

(9) In or about May, 1971, defendant ANTONY
TOMAS, a/k/a Tony T. purchased a quantity of cocaine from
defendant JOAN CARLOS FRANCO, a/k/a Miguel Aspilche, for
a price in excess of \$60,000 in New York, New York.

(10) In or about May, 1971, defendant DOMINGO
RIVERA purchased a quantity of cocaine from defendant JOAN
CARLOS FRANCO, a/k/a Miguel Aspilche, for a price in excess
of \$16,000 in New York, New York.

(11) In or about May, 1971, defendant JOAN
CARLOS FRANCO, a/k/a Miguel Aspilche, sold approximately
1-3/4 kilograms of cocaine to co-conspirator Lorenzo Cancio
for approximately \$13,000 in New York, New York.

(12) In or about May, 1971, defendant DOMINGO
RIVERA delivered approximately \$16,000 to co-conspirator
Lorenzo Cancio at Eva's Intimate Lounge, 1639 Westchester
Avenue, Bronx, New York.

(13) In or about July, 1971, defendants OSCAR CALZADÓ and ATILIO BOCA delivered twenty-five kilograms of heroin and defendant ALBERTO NAVARRO-LIAZ delivered five kilograms of cocaine to defendant WLADIMIR BANDERA in Buenos Aires, Argentina.

(14) In or about July, 1971 defendants WLADIMIR BANDERA and JUAN CARLOS FRANCO, a/k/a Miguel Aspíche, air freighted approximately twenty-five kilograms of heroin and five kilograms of cocaine concealed in antique picture frames from Buenos Aires, Argentina to New York, New York.

(15) In or about July, 1971, defendants JUAN CARLOS FRANCO, a/k/a Miguel Aspíche, and WLADIMIR BANDERA met co-conspirator Lorenzo Cancio in Los Angeles, California.

(16) In or about July, 1971, defendant ROBERTO TORRES, a/k/a Tony T, travelled from New York, New York to Los Angeles, California.

(17) In or about August, 1971, defendant JUAN CARLOS FRANCO, a/k/a Miguel Aspíche, delivered approximately twenty-five kilograms of heroin and five kilograms of cocaine

to co-conspirator Lorenzo Canale in New York, New York.

(18) In or about August, 1971, defendant HENRI GARCIA, a/k/a Gabille, purchased approximately seven kilograms of heroin in New York, New York.

(19) In or about August, 1971, defendant RALPH MALONHA purchased approximately eight kilograms of heroin and 1/8th kilogram of cocaine in New York, New York.

(20) In or about August, 1971, defendant MIGUEL GARCIA purchased approximately eight kilograms of heroin and one kilogram of cocaine in New York, New York.

(21) In or about September, 1971, defendant YOLANDA SARRIENHO, a/k/a Chola, and co-conspirator Alfredo Manza air-freighted approximately eighteen kilograms of heroin and nine kilograms of cocaine ^{18 H} _{9 C} secreted in picture frames from Buenos Aires, Argentina, to co-conspirator Rodolfo Ruiz, a/k/a The Painter, in New York, New York.

COUNT TWO

The Grand Jury further charges:

On or about the 12th day of January, 1971 in the Southern District of New York, ANTHONY TORRES, a/k/a Tony T, ENRIQUE LOPEZ, a/k/a El Callozo, and JUAN CARLOS FRANCO, a/k/a Miguel Aspilene, the defendants, unlawfully, wilfully and knowingly did receive, conceal and facilitate the transportation and concealment of a narcotic drug, to wit, approximately twenty kilograms of narcotic drugs after the said narcotic drug had been imported and brought into the United States contrary to law, knowing that the said narcotic drug had theretofore been imported and brought into the United States contrary to law in that the importation and bringing of any narcotic drug into the United States, except such amounts of crude opium and coca leaves as the

Director of the Bureau of Narcotics and Dangerous Drugs may find necessary to provide for control and legitimate use only, is prohibited.

(Title 21, United States Code, Sections 172 and 174; Title 18, United States Code, Section 2.)

COUNT THREE

The Grand Jury further charges:

On or about the 19th day of May, 1971, in the Southern District of New York, ANTHONY TORRES, a/k/a Tony T, ENRIQUE LOPEZ, a/k/a El Gallego, and JUAN CARLOS FRANCO, a/k/a Miguel Aspilche, the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately ten kilograms of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A), and Title 18, United States Code, Section 2.)

COUNT FOUR

The Grand Jury further charges:

On or about the 19th day of May, 1971 in the Southern District of New York, ROBERTO RIVERA, ENRIQUE LOPEZ, a/k/a El Gallego, and JUAN CARLOS FRANCO, a/k/a Miguel Aspilche, the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately two or more kilograms of cocaine.

(Title 21, United States Code, Sections 812, 841 (a)(1) and 841(b)(1)(A) and Title 18, United States Code, Section 2.)

COUNT FIVE

The Grand Jury further charges:

On or about the 2nd day of August, 1971 in the Southern District of New York, NELSON CANSA, a/k/a Canella, ENRIQUE LOPEZ, a/k/a El Gallego, and JUAN CARLOS FRANCO, a/k/a Miguel Aspilche, the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance,

DEFENDANT'S

D

EXHIBIT
U. S. DIST. COURT.
S. D. OF N. Y. *ed*

DISTRICT COURT
OF THE SOUTHERN DISTRICT OF NEW YORK

MEXICO

/s/ a El Callejo,
CO, a/k/a Miguel Acilche,
ANTHONY COFFEE, a/k/a Tony T,
BERNARD HENRI,
WADSWORTH HANDELA,
VOLANCA CARMILLO, a/k/a Chola ✓
EMILIO DIAZ-CONZALEZ ✓
NELSON GARCIA, a/k/a Cabilla,
RALPH MADONNA,
MIGUEL GARCIA,
OLIVARES, a/k/a El Filado Gil,
ATILIO LOCA,
COCO SALCADO,
ALBERTO HAVANRO-DIAZ.

Defendants.

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OVERLAPS

EDX 72 Cr. 1260

TO BE DISMISSED

INDICATE

S 74 Cr. 472
(BT)

CHARGE

The Grand Jury charges:

1. From on or about the 1st day of July, 1970, and continuously thereafter up to and including the date of the filing of this Indictment, in the Southern District of New York and elsewhere, ENRIQUE LOPEZ, a/k/a El Gallego, JUAN CARLOS FRANCO, a/k/a Miguel Aspilche, ANTHONY TORRES, a/k/a Tony T, ROBERTO RIVERA, WLADIMIR BANDERA, YOLANDA SARRIENTO, a/k/a Chola, EMILIO DIAZ-GONZALEZ, NELSON GARCIA, a/k/a Cabilla, RALPH MADONNA, MICHEL GARCIA, OLIVARES, a/k/a El Filado Gil, ATILIO BOGA, SOCO SALGADO, ALBERTO NAVARRO-DIAZ, the defendants, and Alfredo Nazza, Lorenzo Camilo, Alfredo Avila, Jorge Varela-Pernandez, Roberto Cristobal, Elsa Yashic, a/k/a Laffara, and Rodolfo Ruiz, a/k/a The Painter, named as co-conspirators, and others to the Grand Jury known and unknown, unlawfully, intentionally and knowingly combined, conspired, confederated and agreed together and with each other to violate Sections 173, 174, 512, 841(a)(1), 841(b)(1)(A), 912(a), 960(a)(1) and 960 (b)(1) of Title 21, United States Code.

2. It was part of said conspiracy that before May 1, 1971, the said defendants, unlawfully, wilfully, knowingly, and fraudulently would import and bring into the United States large amounts of heroin and cocaine, narcotic drugs, from places outside thereof, to viz. Chile and Argentina, and elsewhere to the Grand Jury known and unknown, in violation of Sections 173 and 174 of Title 21, United States Code.

3. It was further part of said conspiracy that before May 1, 1971, the said defendants unlawfully, wilfully, and knowingly would conceal, buy, sell, and facilitate the transportation, shipment and sale of a large quantity of heroin and cocaine, narcotic drugs, the exact amount and nature thereof being to the Grand Jury unknown, after the said narcotic drugs had been imported and brought into the United States contrary to law, knowing that the said narcotic drugs had been imported and brought into the United States contrary to law in violation of Sections 173 and 174 of Title 21, United States Code.

4. It was further part of said conspiracy that on and after May 1, 1971, the said defendants and co-conspirators unlawfully, intentionally and knowingly would import into the United States from places outside of the United States, to wit, Chile and Argentina, and elsewhere to the Grand Jury known and unknown, large quantities of heroin and cocaine, Schedules I and II narcotic drug controlled substances, the exact amount thereof being unknown, in violation of Sections 812, 952(a), 960(a)(1) and 960(b)(1) of Title 21, United States Code.

5. It was further part of said conspiracy that on and after May 1, 1971, the said defendants and co-conspirators unlawfully, intentionally and knowingly would distribute and possess with intent to distribute large quantities of heroin and cocaine, Schedule I and II narcotic drug controlled

substances, the exact amount thereof being to the Grand Jury unknown, in violation of Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

6. Among the means by which the defendants carried out this conspiracy were the following:

(a) YOLANDA SANTIAGO, a/k/a Chela, WALENTE BALDERA, JUAN CARLOS FRANCO, a/k/a Miguel Aspilche, Alfredo Luna and Rodolfo Ruiz, a/k/a The Painter, obtained approximately 1/5th of a ton of heroin and cocaine in Argentina and Chile which they smuggled in seven separate air freight shipments into the United States secreted in antique picture frames.

(b) HENRIQUE LOPEZ, a/k/a El Callejo, assisted in arranging for buyers for the heroin and cocaine in New York City and demanded in return a commission of approximately five hundred dollars per kilogram.

(c) ANTHONY TORRES, a/k/a Tony T. ROBERTO RIVERA, and Lorenzo Cancio and others purchased the heroin and cocaine in New York City for more than one million dollars.

(d) NELSON GARCIA, a/k/a Cabilla, RALPH MADONNA and MIGUEL GARCIA purchased the heroin and cocaine on its resale in New York City.

OVERT ACTS

In pursuance of this conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York and elsewhere:

(1) In or about October and December, 1970, defendant JUAN CARLOS FRANCO, a/k/a Miguel Aspiche, and co-conspirators Alfredo Maza and Rodolfo Ruiz, a/k/a The Painter, air freighted fourteen kilograms of heroin, which they had received from defendant WILLIAM DANIEL WOOD, a/k/a Chela, from Buenos Aires, to New York, New York, secreted in picture frames.

(2) In or about January, 1971, defendant JUAN CARLOS FRANCO, a/k/a Miguel Aspilche, and co-conspirator Rodolfo Ruiz, a/k/a The Painter, air freighted approximately twenty kilograms of narcotic drugs secreted in antique picture frames from Buenos Aires, Argentina, to New York, New York.

(3) In or about January, 1971, defendant ANTHONY TORRES, a/k/a Tony T, introduced approximately twenty kilograms of narcotic drugs in New York, New York.

(4) In or about January, 1971, defendant ENRIQUE LOTIA, a/k/a El Gallero, introduced defendant JUAN CARLOS FRANCO, a/k/a Miguel Aspilche, to co-conspirator Lorenzo Cancio in New York, New York.

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(9) In or about May, 1971, defendant ANTONY
TOMMASO, a/k/a Tony T. ... purchased a quantity of cocaine from
defendant JUAN CARLOS FRANCO, a/k/a Miguel Aspilche, for
a price in excess of \$10,000 in New York, New York.

(10) In or about May, 1971, defendant DOMINGO
RIVIERA purchased a quantity of cocaine from defendant JUAN
CARLOS FRANCO, a/k/a Miguel Aspilche, for a price in excess
of \$16,000 in New York, New York.

(11) In or about May, 1971, defendant JUAN
CARLOS FRANCO, a/k/a Miguel Aspilche, sold approximately
1-3/4 kilograms of cocaine to co-conspirator Lorenzo Canale
for approximately \$13,000 in New York, New York.

(12) In or about May, 1971, defendant DOMINGO
RIVIERA delivered approximately \$16,000 to co-conspirator
Lorenzo Canale at Eva's Intimate Lounge, 1639 Westchester
Avenue, Bronx, New York.

(13) In or about July, 1971, defendants OSCAR TALCABO and ATILIO BOGA delivered twenty-five kilograms of heroin and defendant ALBERTO NAVARRO-DEAN delivered five kilograms of cocaine to defendant WLADIMIR BANDERA in Buenos Aires, Argentina.

(14) In or about July, 1971 defendants WLADIMIR BANDERA and JUAN CARLOS FRANCO, a/k/a Miguel Aspileche, air freighted approximately twenty-five kilograms of heroin and five kilograms of cocaine concealed in antique picture frames from Buenos Aires, Argentina to New York, New York.

(15) In or about July, 1971, defendants JUAN CARLOS FRANCO, a/k/a Miguel Aspileche, and WLADIMIR BANDERA met co-conspirator Lorenzo Cuscio in Los Angeles, California.

(16) In or about July, 1971, defendant JUAN CARLOS FRANCO, a/k/a Miguel Aspileche, traveled from New York, New York to Los Angeles, California.

(17) In or about August, 1971, defendant JUAN CARLOS FRANCO, a/k/a Miguel Aspileche, delivered approximately twenty-five kilograms of heroin and five kilograms of cocaine

to co-conspirator Lorenzo Canale in New York, New York.

(18) In or about August, 1971, defendant RAUL GARCIA, a/k/a Gabille, purchased approximately seven kilograms of heroin in New York, New York.

(19) In or about August, 1971, defendant RALPH MALONKA purchased approximately eight kilograms of heroin and 1/8th kilogram of cocaine in New York, New York.

(20) In or about August, 1971, defendant MIGUEL GARCIA purchased approximately eight kilograms of heroin and one kilogram of cocaine in New York, New York.

(21) In or about September, 1971, defendant YOLANDA SARRIENCO, a/k/a Chola, and co-conspirator Alfredo Manza air-freighted approximately ¹⁸ eighteen kilograms of ⁴ heroin and nine kilograms of cocaine ⁹ secreted in antique ^C picture frames from Buenos Aires, Argentina, to co-conspirator Rodolfo Ruiz, a/k/a The Painter, in New York, New York.

(Title 21, United States Code, Sections 173, 174, 346 and 953.)

COUNT TWO

The Grand Jury further charges:

On or about the 12th day of January, 1971 in the Southern District of New York, ANTHONY TORRES, a/k/a Tony T, ENRIQUE LOPEZ, a/k/a El Gallego, and JUAN CARLOS FRANCO, a/k/a Miguel Aspilone, the defendants, unlawfully, wilfully and knowingly did receive, conceal and facilitate the transportation and concealment of a narcotic drug, to wit, approximately twenty kilograms of narcotic drugs after the said narcotic drug had been imported and brought into the United States contrary to law, knowing that the said narcotic drug had theretofore been imported and brought into the United States contrary to law in that the importation and bringing of any narcotic drug into the United States, except such amounts of crude opium and coca leaves as the

Dr. Mel

Director of the Bureau of Narcotics and Dangerous Drugs may find necessary to provide for official and legitimate use only, is prohibited.

(Title 21, United States Code, Sections 172 and 173, Title 18, United States Code, Section 2.)

GRAND JURY

The Grand Jury further charges:

On or about the 19th day of May, 1971, in the Southern District of New York, ANTHONY TORRES, a/k/a Tony T, ENRIQUE LOPEZ, a/k/a El Gallego, and JUAN CARLOS FRANCO, a/k/a Miguel Aspilche, the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately ten kilograms of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A), and Title 18, United States Code, Section 2.)

COUNT FOUR

The Grand Jury further charges:

On or about the 19th day of May, 1971 in the Southern District of New York, ROBERTO RIVERA, ENRIQUE LOPEZ, a/k/a El Gallego, and JUAN CARLOS FRANCO, a/k/a Miguel Aspilche, the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately two or more kilograms of cocaine.

(Title 21, United States Code, Sections 812, 841 (a)(1) and 841(b)(1)(A) and Title 18, United States Code, Section 2.)

COUNT FIVE

The Grand Jury further charges:

On or about the 2nd day of August, 1971 in the Southern District of New York, NELSON GARCIA, a/k/a Estrella, ENRIQUE LOPEZ, a/k/a El Gallego, and JUAN CARLOS FRANCO, a/k/a Miguel Aspilche, the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance,

CERTIFICATE OF SERVICE

April 4, 1977

I certify that a copy of this brief and appendix has been mailed to the United States Attorney for the Southern District of New York.

Harold L. Galt